A. Yes, sir.

Q. How many are there?

A. There are three others who specialize in that altogether.

Q. Will you name them?

A. J. L. Cox & Son, Parkhill Truck Company, Tulsa, C. Hobson, Dunn, Dallas.

[fol. 1476] Q. Are you personally familiar with the operations of those companies?

A. Generally, yes.

Q. They have the same authority that you hold?

A. They do.

Q. Over the same territory?

A. That is right.

Q. Do you know that they operate the same type of equipment?

A. I know that they have the same type of equipment.

Q. Do you know of your own personal knowledge whether or not those three companies own the equipment that they operate?

A. As far as I know, they do.

Q. Do you know whether or not the same conditions arise occasionally with those carriers that arise with you when you will need an extra truck to get that pipe unloaded off that rail car?

A. Yes, sir; it does.

Q. If you don't get it unloaded you have to pay demurrage on the car, is that right?

A. That is right.

Q. When you get on the job, well, take a 50-mile segment of a pipeline that is awarded to you over average terrain. Can you state how many pieces of equipment a job like that will require?

A. Generally over average terrain four pieces of equipment. That would be dependent upon the length of haul from the rail head to where the pipeline right-of-way was. [fol. 1477] Under ten miles, four pieces of equipment would be plenty. Over that you would gradually add pieces.

Q. Let's say you approximate four pieces of equipment for that job when you start out on it. Do you ever take any extra equipment along in case of breakdowns?

A. Yes, we do. We usually take an extra stringing truck.

When I said four pieces of equipment I meant hauling trucks. We take in addition to that usually two gin trucks in case the pipe comes in fast and so we will have another one there and if it breaks down we will still have another one.

Q. And even in spite of furnishing stand-by equipment, it is still necessary at times to use the equipment of someone else?

A. Yes, sir.

Q. What is your position in connection with this proceeding here? How is it going to affect you?

A. If we are not able to lease a truck it will throw a hardship on us as well as some company for whom we are working, as well as the railroad, because they won't get the cars away. Where we are stringing a pipe, if we are held up in stringing by lack of trucks that holds up the pipeline company from putting their product through the line and it goes back a long way.

Q. Suppose you are out on one of these jobs in the mountains several hundred miles away from the office of the District Director and you need a truck? Will it be convenient [fol. 1478] and possible for you, or practical for you, to first get authority from the Interstate Commerce Commission and then to have the lease executed by an authorized officer of your company and an authorized officer of the other company before you start using that truck?

A. No, sir, it would be a handicap because of the time involved when we have to have a lease truck. We have to have it right quick. By the time we could make application to the district office the situation would grow a lot worse.

Exam. Lawton: I take it you are opposed to any prohibition of spot leasing, or trip-leasing? Is that your position?

The Witness: I think trip-leasing is all right for those people who need it.

Exam. Lawton: And there are only four of you carriers in the country, is that right?

The Witness: Major carriers, sir. We specialize on that.

Mr. Kirtsinger: They specialize on main pipelines.

The Witness: Main trunk lines.

By Mr. Kirtsinger:

Q. You are not what is termed an oil field hauler?

A. No, sir.

Q. Some of the oil field haulers, however, do have pipe stringing authority on their territory, isn't that correct?

A. That is right.

Q. You have no definite proposition to submit to the Commission on this matter, do you?

[fol. 1479] A. No, sir.

Q. As I understand it, all you want is to be protected so that you can continue engaging in business in the manner in which you have done so in the past?

A. Yes, sir. We would like to have a little more business.

Q. Are there situations which arise in your business where the contractor or the pipeline company will lease equipment from others and perform the stringing of that line itself?

A. Yes, sir. That is hurting our business considerably. Right now there is a group of contractors, major contractors, that is, and I mean contractors who dig the ditch, lay the pipe, weld it, coat it, and cover it back up, who go out and lease trucks from any one who has that type of equipment. Therefore, they can get the rate low and do the work. Sometimes the contractors make a deal with an authorized carrier who does not have rights in a certain state and this authorized carrier will lease his equipment to this contractor and go ahead and do the work. That is hurting my business.

Q. Have you made complaints to the district offices of the Interstate Commerce Commission?

A. Yes, sir.

Q. And what have been the results of the complaints you have made?

A. Nothing so far.

[fol. 1480] Q. Let's take an example. One instance about a year or so ago showed a large contractor from Houston, Texas, who had the contract for the construction of a pipeline of some 260 miles of length between Lugaton Field in Kansas to a point in Colorado, is that right?

A. That is right.

Q. And did you bid on that job?

A. We did.

Q. Along with the other pipe stringers?

A. Yes, sir.

Q. Did any of the pipe stringers get that work?

A. Not to my knowledge.

Q. What happened?

A. The contractor leased all of his trucks from local carriers in that area. I don't know whether they had authority or not, but he went ahead and strung his own pipe.

Q. And used the trucks under a lease arrangement of some kind?

A. Yes, sir.

Q. Do you know why that is usually done by the contractor?

A. More or less to beat down the price.

Q. Did you have another situation in West Virginia a short time ago?

A. Yes, sir.

Q. Where the stringers all bid on a particular job and another carrier who didn't have authority in that state applied for temporary authority from the Commission [fol. 1481] which was denied upon our protest?

A. That is right.

Q. And then leased his equipment to the pipeline company at a lower rate, which lease arrangement resulted in a lower rate.

A. Yes, sir.

Q. Is there any other statement you care to make in that connection, Mr. Vandaveer?

A. No, sir, I think that covers about everything.

Q. Is there any other point that you have on any other subject?

A. No, sir.

Exam. Lawton: Is there any cross examination?

Cross-examination.

By Mr. Burton K. Wheeler:

Q. You want to prevent the leasing of these trucks by regulating the leasing of them, is that right?

A. Well, something should be done about the situation.

When the contractor leases his trucks, it is my understanding that he is not governed or the results and regulations that apply to us are not applied to the contractor that leases the trucks. Therefore, he doesn't have to meet all the safety requirements that we had to. That is my understanding. I could be wrong. It has been the practice in the past that they don't.

Mr. Kirtsinger: Well, at any rate, those leasing arrangements of that kind have resulted in a great loss of busi-
[fol. 1482] ness, not only to you but to others?

The Witness: That is right. For ourselves alone, for the past year and a half, we have had 50 per cent of our equipment idle.

Mr. Kirtsinger: And on those very jobs where the trucks were leased to the contractor or the pipeline company and they did the stringing, you had the authority and you had the equipment and all the other things that were necessary to perform the job, isn't that correct?

The Witness: That is correct.

Cross-examination.

By Mr. Eldred:

Q. Mr. Vandaveer, would it be best for your interest to provide rules and regulations which would prevent the leasing from these contractors which might prohibit you from this spot-leasing? In the over-all picture what would you rather have?

A. I wouldn't comment on that until I thought about it a little while longer.

Q. You were saying here, stop the leasing for this other fellow, but let me lease.

A. That is not the same thing.

Mr. Kirtsinger: That is a poor example. The leasing he does is an emergency proposition. The leasing he is talking about with the contractor is purely a subterfuge and covers the entire job.

[fol. 1483] Exam. Lawton: He still uses his leased equipment in his carrier operations.

Mr. Kirtsinger: In his carrier operations, just merely to augment on that particular operation for one day.

Q. You spoke of your competitors using the same type of leasing operations that you have used. Do you know if they are all as careful as you are about record keeping, as you have indicated you are? Do you know that of your own personal knowledge?

A. No, not any more than I know the type of leasing arrangements that they have, sir. I didn't want to give impression that I knew my competitors' business. I know that most of them use a lease arrangement. I don't know what its form is nor do I know what sort of records they keep.

Q. But it is similar as to its major aspects to the system that you are following, is it not?

A. I assume so. My whole point is that if it can be done without abuse, it shouldn't be eliminated; that if records can be kept by an operator who wants to use a lease arrangement legitimately, there is no reason why the whole practice should be eliminated.

Q. And your position, as I understand it, is that a trip lease, if it, in fact, is a bona fide lease, can be performed as legally as a long-term lease?

[fol. 1502] A. Yes, sir.

Q. Were you here on Thursday and Friday of last week during the time that Mr. Blanning was testifying?

A. I was here on Friday, sir. I didn't get here on Thursday.

Q. Have you seen a copy of the exhibits that he offered in connection with his testimony?

A. I was able to look at them very cursorily this morning.

Q. Well, you haven't had an opportunity, then, to familiarize yourself with his Exhibit No. 2, have you?

A. I am afraid not.

Q. I just wanted to find out if you were familiar with it.

Mr. Pou: That is all I have, Mr. Examiner.

Exam. Lawton: Mr. Diehl.

Cross-examination.

By Mr. Diehl:

Q. Mr. Witness, it appears from your statement as to experience with owner-operators—or does it so appear that

the owner-operators are getting their necessary rest, that is, if there is any relation between the rest and the experience as to accidents?

A. Yes, sir.

Q. So that your experience with owner-operators, in the matter of accidents—from the figures you gave—is a little better than with your company-employed drivers, I believe.

A. Yes, it is.

Q. So, is it reasonable to assume from that that besides owning the equipment, and not, therefore, wanting to crack [fol. 1503] it up, the man is getting his necessary rest?

A. I would assume so.

Q. Otherwise you wouldn't have such good experience with him?

A. That, plus the fact that in checking these men, we find that they perform their job properly. That leads me to believe that they are getting their proper rest.

Q. And if there is any relationship between accidents and rest, it is clearly demonstrated, is it not, from your figures, that the man is getting his rest?

A. I would say so.

Q. That is all.

Mr. Pou: May I ask one other question, Mr. Examiner?

Exam. Lawton: Yes.

Cross-examination.

By Mr. Pou:

Q. How do you compensate the owner-operator for the use of the vehicles?

A. We pay on a trip basis, sir. We have a schedule of rates between our fixed terminal, and pay on that basis, regardless of the tonnage.

Q. Revenue, you mean?

A. Regardless of the revenue, I meant to say. We guarantee a minimum weight and pay proportionately over the trip basis for greater weight. Do you understand what I mean?

Q. Yes, sir, I think I do. Do you mean to say that the amount of the freight received for the particular haul [fol. 1504] has no relationship to the amount that you

Exam. Lawton: The contractor leases it and then this gentleman loses the business.

Mr. Pou: Is the contractor engaged in interstate operations?

The Witness: I think he is, but I don't know whether the Commission holds that way or not. But they regulate us and we do the same work they are doing.

Mr. Pou: Is the pipe moving from one state to another?

The Witness: Sure.

Mr. Ellis: How many pieces of equipment do you own? you didn't tell us that.

The Witness: I told you 30 trucks.

Mr. Turney: Mr. Witness, are those trucks that are leased to the shipper leased with driver?

The Witness: I don't know. You mean when we lease one?

Mr. Turney: No.

The Witness: No, I don't know, but I imagine they are.

Mr. Turney: You imagine they are? Thank you.

The Witness: That is my opinion, but I couldn't say.

Exam. Lawton: If there are no other questions, the witness is excused.

(Witness excused.)

[fols. 1484-1488] Mr. Boot: Mr. Examiner, before you close, I would like to have a short stipulation by Mr. Hufnagel on the record.

Mr. Hufnagel: I am F. B. Hufnagel, Jr., representing the Private Carrier Conference of A.T.A. I am sorry I was absent temporarily when the different conferences of A.T.A. were supporting the final report of the A.T.A. truck leasing committee, which is your Exhibit No. 10.

I would like to register for the record on behalf of the Private Carrier Conference that we have carefully considered this final report as submitted and agree fully in all respects with it.

Exam. Lawton: You stipulate that that is the position of your conference?

Mr. Hufnagel: Yes, sir.

Exam. Lawton: Off the record.

(Discussion off the record.)

Exam. Lawton: On the record. We will recess until 9:30 a.m. Monday morning.

(At 5:25 o'clock p.m., the hearing was recessed until 9:30 o'clock a.m., Monday, October 18, 1948.)

[fol. 1489] PROCEEDINGS—October 18, 1948

MILTON E. HARRIS was sworn as a witness and testified as follows:

Direct examination.

By Mr. Boot:

Q. Will you please state your name and address?

A. My name is Milton E. Harris, Pittsburgh, Pennsylvania.

Q. With what company are you connected, Mr. Harris?

A. I am the executive vice president of Continental Transportation Lines, common carrier, regular common carrier, Class I, operating in five states—Ohio, Pennsylvania, New Jersey, New York, and West Virginia. And Maryland—six states.

Q. Mr. Harris, do you support the A.T.A. principles as testified to by Mr. Sutherland?

A. We do.

[fol. 1490] Q. Do you use leased equipment in your operation?

A. Yes, we use a considerable number of leased equipment.

Q. Do you also use some owned equipment?

A. Yes.

Q. Do you engage in what is commonly called trip leasing, one-way trip leasing?

A. Yes, we do.

Q. And do you have any owner-operators on a long-term basis?

A. Yes, we also have some on a long-term basis.

Q. Will you briefly explain your general operation to the Commission? That is, how you lease this equipment?

A. We operate between fixed terminals in the six states

referred to. Presently we are doing a gross volume of over 4 million dollars, and are considered in that area as one of the larger carriers. We have been operating for 16 years, and during that period of time have made use of owner-operators under so-called leasing arrangements. We also own some of our equipment—by far the smaller portion of it. Our experience with owner-operators, under leasing arrangements, on single trip leases over that period of time, has been particularly good.

I would like to say that many of the owner-operators who started with us 12 or 15 years ago—some even less time than that—have built themselves up a fleet of trucks—two in particular that I have in mind started with one truck and now one owns, I think, 25 trucks, and the other owns about 18 trucks. These owner-operators—and they [fol. 1491] are not unusual, these two, but are typical—are gentlemen, notwithstanding the fact that they operate under trip lease arrangements. They are conscientious businessmen who know how to drive and get a job done well. Our experience with them has been very favorable.

Q. Mr. Harris, you have some operators whom you call regular operators and then you have some that you call trip leasers; is that correct?

A. Actually, all of our owner-operators are employed under trip leases—many of them, however, are what we term regular owner-operators—those operators who have been employed for many years, week after week, but who nevertheless are all employed under the same lease agreement as the single trip operator.

Q. Take, for example, one of these owner-operators. He would load up in Pittsburgh for New York. Is that a single trip and if so how does he get back from New York to Pittsburgh?

A. We operate, as I said, between fixed terminal points. If he was loaded out of Pittsburgh for New York, he would unload in New York and, in all probability, would be loaded back—although there is no obligation on our part to load him back. With regular owner-operators, we maintain what we call a regular list, that is, a list of operators who have worked for us consistently over many years, whom we know to be reliable and dependable in every respect and who are given preference in loading back. Very often,

[fol. 1492] however, if we can't load an owner-operator out of our New York office, we will send him to our Newark office, or possibly even as far as our Trenton office, in order to get him back.

Q. What has been your experience as to accidents between owned equipment and owner-operated equipment?

A. I had a survey made of our own business during the past year. I picked out the second quarter of 1948 simply as a representative period. There was no reason why I picked the second quarter any more than the first or the third quarter of last year. I just happened to pick the second quarter of 1948, and these were the statistical results of that survey. During that period of time—that would be April, May, and June—396 owner-operators drove a total of 1,414,705 miles, and in the same period of time, 47 company-employed drivers drove 708,210 miles. Of the 396 owner-operators referred to, 155 of that group——

Mr. Lieberman: Which group?

The Witness: I will start that sentence over again.

A. (Continuing) Out of the 396 owner-operators, 155 made single trips. In other words, they were loaded from one terminal and that was the end of them as far as we were concerned, during that period of three months.

Exam. Lawton: What was that last figure?

The Witness: 155, sir.

[fol. 1493] A. (Continuing) The results showed that 155 owner-operators working under lease arrangements made 155 single trips driving approximately 70,170 miles, without one accident.

396 owner-operators, included in which group are the 155 just referred to, working under lease arrangements, drove a total of 1,414,705 miles with nine chargeable over-the-road accidents, or approximately 157,189 miles per accident.

Mr. Lieberman: May I have that again?

The Witness: 157,189 miles per accident.

A. (Continuing) 47 company-employed drivers drove 70,210 miles with five chargeable over-the-road accidents, or approximately 141,642 miles per accident. You will note that I have only recognized, first, over-the-road acci-

dents, and, second, those accidents which, according to our insurance carrier, were chargeable to the driver—that is, a disinterested survey made by the insurance company.

A survey of cargo insurance claims during the same period showed the following: 396 owner-operators drove a total of 1,414,705 miles without a cargo loss due to accident.

47 company-employed drivers drove a total of 708,210 miles with one cargo loss of approximately a thousand dollars. Interesting to note that the average trip of the owner-operator was 426 miles as compared with the average trip of the company-employed driver of 197 miles.

My deductions from these figures confirm the opinion that I have always had and that is that owner-operators [fol. 1494] working under lease arrangements are safe drivers.

By Mr. Boot:

Q. Mr. Harris, how do you control this physical examination certificate of drivers? How do you get them?

A. We require a certificate of physical examination before the driver is loaded out. When we receive the certificate in our files, we issue a card which is accepted by our other terminals as evidence of the fact that we, in our main office, have the certificate on file. Our terminal managers are instructed not to load any operator out without a certificate dated within one year.

Q. How do you assure yourselves of securing the logs after the trips have been completed?

A. We insist upon all logs being turned in at the end of each trip before paying the operator for his trip, and we have been getting them pretty successfully.

Q. In other words, no log, no money?

A. That is right.

Q. If this Commission should instruct——

A. Incidentally, we have to treat our own company employees the same way. We don't pay them until they turn their logs in because they are just as apt not to turn their logs in.

Q. If this Commission should stop trip leasing, how much of an investment would be necessary for you to continue with the same volume of business you have today?

How many pieces of equipment do you think you would [fol. 1495] need?

A. I would say conservatively over 2 million dollars.

Q. To your knowledge, do your competitors use the same type of leased operation?

A. Yes, to my knowledge, they do.

Q. What is your principal purpose in appearing here today, Mr. Harris?

A. My principal purpose is to attempt to show the Commission that if operated properly, leasing arrangements with owner-operators are a legitimate way of operating a business and should be retained. I feel that any practice can be abused, just as a man might borrow a gun—whether he borrowed it for a week or for a month wouldn't make much difference if it was going to be used for an illegal purpose. On the other hand, it could be borrowed for a legal purpose. A man might want to go hunting. So that I feel that the operation can be legitimately run and simply because there have been some abuses is no reason why the whole practice should be disregarded.

Over a period of 16 years I say we have satisfactorily used this form of operation. It has enabled us to serve the industries that we serve, the shipping public, and I thing it has built the entire motor transportation industry up to where it is today.

I would like to comment, Mr. Boot, if I may, as to the reasons I think the owner-operator is a good operator. I think these reasons might be well recognized, but I think [fol. 1496] they are worth repeating.

The owner-operator has a solid investment in his own equipment. Generally, he has invested ten or twelve thousand dollars in a tractor-trailer. The tendency is for him to take better care of that equipment *and* a company-employed driver—at least, we have found that to be true. We have found that the average owner-operator has more mechanical ability, or at least, has an inclination to use that mechanical ability more than a company-employed driver who, generally, at least, will not make use of any ability that he might have. The tendency is to simply wait until he is sent to them, which delays freight.

I have found, too, that the possibility of dismissal of an owner-operator, in consequence of incompetency, is greater than in the case of a company-employed driver.

The rules and regulations under which we are working make dismissal even for good cause generally extremely difficult. This factor seems an incentive to good driving by the owner-operator, because if his operation is not satisfactory, and the equipment is not kept in condition, he is dismissed, and that is the end of it.

Incidentally, his equipment, in our operation, is inspected just exactly the same as our own equipment. It is checked, and I feel that we have a fairly decent operation, practically [fol. 1497] 60 per cent of it is owner-operated and because of our experience, I think that the practice should be retained—with certain safeguards which the A.T.A. Committee has recommended.

Q. Mr. Harris, one more question. On the equipment which you lease, what markings appear?

A. We have our own name, our ICC number, and also the Utility Commission of Ohio number, which is required.

Q. Are there any other markings which would lead anyone to believe that it is anything but a Continental Transportation movement?

A. I would say for the most part no, Mr. Boot. We attempt to have all other markings eliminated, or, at least, covered, and that has been generally the practice.

Mr. Boot: You may cross examine.

Cross-examination.

By Mr. Pou:

Q. Mr. Harris, I believe you made it very clear that you require each driver, on completing a trip in an owner-operator vehicle, to turn over to the company the log covering the trip he has made and showing his hours of service on that trip.

A. Yes, sir.

Q. What assurance do you have, at the time the driver commences the trip, as to his hours of service during the preceding 24 hours or the preceding six days?

A. I can answer that by a question. What assurance do I have that my company-employed men have had their [fol. 1498] required sleep before they go out? The only assurance that we have is to question the owner-operator.

And, as I say, generally, that man is regular—I mean most of them are regular.

Exam. Lawton: What do you mean by "regular"? That they behave themselves after hours?

The Witness: No, I mean regular owner-operators. They operate from one terminal point to another. I wouldn't have any more assurance, sir, than I would that our company-employed drivers would.

Mr. Pou: Is there this distinction: that your company-employed drivers are regularly under your service, whereas the owner-operators may be in your service one day and in the service of one of your competitors another day, and of a third party the next day? Is that true?

The Witness: Well, let's take a run which starts on a Sunday night.

By Mr. Pou:

Q. Yes, sir.

A. A company-employed driver has finished his last run, generally, on Friday. We have no way of controlling that man's actions between Friday and Sunday. He might not have obtained any sleep at all in that interval. I wouldn't know. I think it is reasonable to expect that a man who intends to take a truck out on Sunday night will have had his sleep, and we instruct them to have it, so I think the same supposition should be held true of owner-operator [fol. 1499] who, as I say, is a businessman, does not want to crack up, and who is anxious to do a job.

Q. Well, you know, of course, Mr. Harris, that the prescribed method for a driver to record his hours of service is on the driver's log.

A. Yes, sir.

Q. Do I understand that you do not require the driver to submit a copy of his log or logs to you for the preceding 24-hour period or the preceding 7-day period?

A. No, we require it, and possibly, sir, a similar requirement for owner-operators would be a good one. I felt that a requirement that owner-operators should retain their logs for a week previous, on their person at all times, would be a good regulation, and in that way would assure the carrier of compliance.

Q. I am not certain I understood. You said that you required them, and then you referred to your regular drivers. Do you require that the owner-operators submit their logs to you for inspection for the preceding seven-day period, prior to the commencement of each trip?

A. I don't believe so.

Q. You have already stated, I believe, that you do make inquiry of them?

A. Yes, sir.

Q. And that is apparently the only assurance that you have that the driver is still qualified, from an hours of [fol. 1500] service standpoint, to make the trip that he is about to make for you; is that right?

A. That is right.

Q. So you really don't know, from any logs kept by him, whether he has already been on duty for 60 hours or more during the same 168-hour period, or whether he has already driven 10 hours or more during the same 24-hour period, do you?

A. Not unless he is operating for us. If he is operating for us, we keep tally of his hours of service the same as we do for our own employees.

Q. Yes, sir. Now, what record do you have, and do you keep, as to the exact time when one of these trip leases commences and the exact time when it ends?

A. We have records in each of our terminals, on which the dispatcher marks the time the truck departs and the time it arrives.

Q. And that would establish pretty closely the driving time?

A. I think so.

Q. If this same driver spent an hour or more at each end of the line loading or unloading, would that be shown by your records?

A. Well, it wouldn't be shown by that particular record. It would be shown by other records in connection with the loading operation or unloading operation.

[fol. 1501] Q. So it would be possible for a safety inspector of the ICC, by checking your records, to establish the hours when that particular driver was in your service, would it not?

A. I think so.

pay the driver for his own services and for the use of his vehicle?

A. That is what I mean.

Mr. Pou: That is all.

Exam. Lawton: Mr. Wheeler.

Cross-examination.

By Burton K. Wheeler:

Q. Which is the most profitable for the company: to employ their own people or to have these trip leases? You undoubtedly keep figures on that. Which is the most profitable for the company?

A. Actually, sir, I don't have figures. I could hazard an opinion, for what it might be worth. I feel that the use of owner-operators is more profitable for several reasons.

Q. What are those reasons?

A. Well, you must consider the investment of moneys in equipment and the return on that investment, plus the maintenance of that equipment, which would entail considerably more personnel and more investment in garages, mechanics, and equipment itself.

Q. So that if your competitor has his own trucks and equipment, and his own men, you, as a matter of fact, do business cheaper than the man who owns his equipment?

A. Well, they don't seem to think so.

Q. But according to your own statement, that would be true, would it not?

[fol. 1505] A. I think so, yes.

Q. Now, you said one of the reasons for which you favored this trip leasing was that the possibility of dismissal is greater when you have the owner-operators than it is when you have your own employees. Would you explain that to us?

A. I might as well be frank.

Q. Well, that is what I expect you to be.

A. Under union regulations, as I know them to exist, it is extremely difficult to dismiss a company-employed driver. It is not difficult to cancel any lease arrangement that you might have with an owner-operator, who, in your opinion, was incompetent.

Q. You could fire him whether you found him competent or incompetent, couldn't you?

A. That is right, but it wouldn't serve our purpose to fire him unless there was some reason for it.

Exam. Lawton: I wish you would clear up what you mean by "lease arrangements." Are you talking about a verbal arrangement?

The Witness: No, sir, they are in writing.

Exam. Lawton: All of your arrangements are in writing?

The Witness: Yes, sir.

By Mr. Burton K. Wheeler:

Q. Now, if you can operate cheaper with these owner-operator and trip lease arrangements, then, why is it that [fol. 1506] you don't conduct all of your business on trip leases and leases rather than have any equipment at all?

A. There is a need, sir, to have a certain amount of equipment to attain a degree of flexibility. We have, for example, a fleet of trailers, and some power equipment to pull those trailers, but by far a greater number of trailers. That is to provide us with the flexibility necessary to keep our dockmen working in our terminal points, and to avoid those crests and valleys of the movement of freight. I don't know whether I have made myself clear.

Q. I think so. One of the reasons, then, why you prefer to have your leasing arrangements rather than your own employees is because of the fact that the owner-drivers do not belong to any union and consequently——

Mr. Boot: I object to that union being brought in, Mr. Examiner.

Mr. Burton K. Wheeler: Well, I am asking the question.

Mr. Lieberman: I might also point out that there was no testimony either on direct or cross-examination, if the Examiner please, that the owner-drivers didn't belong to a union.

Exam. Lawton: Well, I think he mentioned that it was much more difficult to fire a company driver because of the union rules.

Mr. Diehl: In response to a question from the Senator.

[fol. 1507] Mr. Burton K. Wheeler: Well, we are not

limited, I take it to the technical cross-examination in a matter of that kind.

Exam. Lawton: Read the question.

Mr. Burton K. Wheeler: I didn't finish the question.

Exam. Lawton: All right.

Mr. Burton K. Wheeler: I will rephrase it.

By Mr. Burton K. Wheeler:

Q. You stated a moment ago that one of the reasons why you preferred the owner-operator was because of the fact that you could dismiss him easier than you could the regular employee.

A. I don't believe I said that. I said that I felt that was an incentive for the owner-operator to drive safely.

Q. Oh, no, but I asked you the question as to the reason why you preferred the owner-operator and you stated—and I wrote it down—the possibility of dismissal is greater with the owner-operator than with the employee. That was your statement.

A. Yes.

Q. Then I asked you why that was so, and you stated it was because of the fact that you own employee, in substance, belonged to the union and that you had difficulty in discharging a union employee.

A. Well, I would like to make myself clear now on the record. I had in mind, in that whole conversation, the application of safety, and the relationship between the [fol. 1508] owner-operator and safety, and when I said that the fact that he could be dismissed without any difficulty was an incentive for ~~him to drive~~ carefully and safely. That is what I meant. We have relationships with a good many local unions, and it would be foolhardy for me to say, on the stand, that I would prefer not to deal with them. And I didn't mean that.

Q. Why did you say it would be foolhardy for you to make that statement when you deal with unions?

A. Why did I say it?

Q. Yes, why would it be foolhardy for you to make that statement?

A. Well, I don't care to go into a discussion of employer-employee relationships.

Q. But you already have gone into it.

Mr. Diehl: Mr. Examiner.

Mr. Boot: Mr. Examiner, this is getting a little further than leasing. We are getting into labor relations.

Mr. Turney: Mr. Examiner, also, I want to object to this whole line of questioning. We are dealing here with some alleged abuses by carriers. I think there are other forums to deal with abuses by labor unions and I think we might just as well stay off that subject here or we will be here until the Lord knows when, and I object very much to this whole line of questioning.

[fol. 1509] Mr. Lieberman: I might also point out, your Honor, that this witness definitely stated that any statements he may have made with respect to dismissals related solely and exclusively to safety factors, and whether or not it would be foolhardy for him to make any statement in relation to his employer-employee relationships, has absolutely no bearing whatsoever on the factor of safety, and I submit that his testimony, and the cross examination, should be confined solely to the factors relating to the leasing arrangements, and the economics involved in this matter, I think, are foreign and remote to the issue, regardless of the fact that they may have been introduced by Mr. Blanning, the District Director.

Mr. Lordan: Mr. Examiner, I don't think there is any question propounded to the witness.

Mr. Diehl: We can get something for the Examiner. I move that the preceding list of cross examination questions be stricken from the record.

Mr. Burton K. Wheeler: On what basis?

Mr. Diehl: On the basis of the preceding testimony.

Exam. Lawton: Let's try to curtail this line of questioning, Mr. Wheeler. I think it is going a little far afield.

By Mr. Burton K. Wheeler:

Q. Do you think, Mr. Harris, that it would be proper for the Commission to grant permits to carriers when their whole operation is conducted on the leasing basis?

[fol. 1510] Mr. Lieberman: I object.

Mr. Turney, Jr.: I object.

Mr. Lieberman: If your Honor please, the opinion of this witness as to the propriety of a Commission action has

no bearing on this issue and even if he had an opinion, I don't believe the Commission would be interested in it.

Mr. Turney, Jr.: Mr. Examiner, further to that objection——

Exam. Lawton: Sustained.

Mr. Brodsky: In that connection, Mr. Examiner, I would like to point out that several of Mr. Blanning's objectionable practices that he listed in the exhibit No. 2, the fact that there are carriers who use primarily trip-lease operations and then come in and protest other carriers who do own and operate their own equipment, and who want to obtain authority from the Commission. So that I think this line——

Exam. Lawton: On the further cross examination of Mr. Blanning, you can go into that matter.

Mr. Burton Wheeler: Mr. Examiner, let me call attention to this: the testimony has already been offered in evidence, both by the witness from California and by Mr. Blanning, to the effect that in the trip leasing, and also, I think, by a witness for ATA, if I am not mistaken, that it does tend to break down the rate structure by the trip leasing, and so forth. Now, when they talk about not going into the economic questions involved in the query, that is one of the very principles upon which your rate [fol. 1511] structure is based. If you can't go into the economic phases of it, then, the whole hearing might as well be ended——

Exam. Lawton: I am not stopping you from going into the economic phases. I don't think the man's opinion is relevant, because they have already granted permits.

Mr. Burton Wheeler: I understand that. But when they talk about not going into the economic phases of it, I don't see how we can avoid it.

Let me ask you this question, Mr. Harris.

By Mr. Burton Wheeler:

Q. There is a chaotic situation existing in the trucking business at the present time, is there not?

Mr. Lieberman: Objection. There is absolutely no evidence whatsoever of record that there is any chaotic con-

dition existing in the trucking industry today, from the mouth of this witness.

Mr. Burton Wheeler: Well——

Exam. Lawton: You may rephrase it and ask if there is a chaotic condition.

Mr. Turney, Jr.: Can't we have the question a little more specific, Mr. Examiner?

Exam. Lawton: That is up to Mr. Wheeler. You may answer, if you understand the question. Did you understand the question?

[fol. 1512] The Witness: Yes, I understand the question.

Well, I think it all depends, Mr. Wheeler, upon your definition of chaotic. I don't think that the industry is in a chaotic condition now.

Exam. Lawton: All right.

By Mr. Burton Wheeler:

Q. Do you think there is need for further regulation of any kind in the industry?

A. Yes, sir, I do.

Q. What is your reason for saying that you think there is need of further regulation in the industry?

Mr. Turney, Jr.: Mr. Examiner, is this questioning being confined to the issues in this case or is there general need for any regulation? I submit that this line of questioning, on vague generalities like this, is wholly out of order in this proceeding, and it is going to be long enough without it.

Mr. Burton Wheeler: Let me say that the gentleman who put him on the witness stand—and he is testifying for the ATA—the ATA has already come in here suggesting certain regulations. Now, the question, it seems to me, is proper as to whether or not there should be any regulations of any kind or character.

Exam. Lawton: Do you mean with respect to leasing?

Mr. Burton Wheeler: With respect to leasing.

Exam. Lawton: I will permit the answer on that ground.

The Witness: Yes, I readily agree that there should be [fol. 1513] regulations and I premised what I had to say on the stand by saying that I agreed with the recommendations of the ATA Committee.

Mr. Burton Wheeler: Yes.

By Mr. Burton Wheeler:

Q. What particular regulation is it that you do not agree with, which has been suggested by the Commission?

A. I object to the elimination of trip leases, for one thing, and whether or not the proposal has been made, I would object, if made, to a proposal that owner-operators be considered employees. I don't know whether that proposal was made.

Q. You would object to their being made employees of the carrier?

A. Yes, sir.

Q. And why would you object to that?

A. I can't see any need for it. There is nothing to be gained by it.

Q. What other regulations do you object to, of these which have been proposed, and why?

Mr. Turney, Jr.: Mr. Examiner, the witness has already testified that he is in favor of the ATA regulations. There are a fairly large number of them. There is a much greater number of the proponent leasing regulations which are contained in the order, and I submit that the way to ask this witness questions is to ask him about the specific regulations and not ask him what regulations might he object to if [fol. 1514] they were passed. The witness can't possibly answer these questions in any way that can help this record one way or the other.

Exam. Lawton: Well, if he can't, he can so indicate. I think his opinion as a very large user of this owner-operator lease is important.

The Witness: Well, I have attended some of the hearings, and have studied the subject, and yet it would be extremely difficult for me to tell you generally what I object to in the original proposals. I do agree with the recommendation submitted by the ATA.

By Mr. Burton Wheeler:

Q. And you agree with all the recommendations submitted by the ATA?

A. Yes, sir.

Q. Did you attend all the meetings of the ATA?

A. No, sir, I wasn't on the committee.

Q. You were not on the committee and didn't take part in the discussion?

A. I say I was not a member of the Committee. I attended one hearing as a witness.

Q. Did you object to the original proposals sent out by the ATA?

Mr. Lieberman: I submit that the opinion of this witness has been stated. The process that may have gone through his mind in arriving at that conclusion certainly is of no [fol. 1515] interest to this Commission. At one time he may have had one opinion or he might not have. We are certainly not interested in that right now. We are interested in his conclusion, and he has stated it.

Mr. Burton Wheeler: I can appreciate that the counsel is not interested in any cross examination of this witness or anything else that might be brought out that would be in favor of any regulation.

Mr. Lieberman: I submit that is an incorrect statement.

The Witness: The Witness has already testified, sir, that he is in favor of regulation. So you can't distort my testimony to that extent. I am in favor of regulation. I am in favor of the regulations proposed by the ATA Committee. Now, there are a lot of things that I am not in favor of as proposed originally by the Bureau of Motor Carriers. It would probably take me an hour to go into all that with you.

Mr. Burton Wheeler: I understand that.

By Mr. Burton Wheeler:

Q. Now, I asked you, however, if you agree with the original proposals sent out by the ATA.

A. I did not.

Q. You did not.

A. No, sir.

Q. What specific ones did you not agree with there?

Mr. Lieberman: If your Honor please, I press my earlier objection. I don't think this is the proper time to ask him [fol. 1516] as to the earlier regulations. This man has stated his opinion now, as to how he stands on the present ATA recommendations. It is a democratic country. We

are entitled to change our opinions and so forth, but once we have reached a conclusion, not be questioned as to why.

Exam. Lawton: The witness may answer.

A. I don't think that the ATA Committee made any previous recommendations. In their previous reports, as I understood them, they simply submitted certain proposals that had been submitted to them. The only recommendations that were made were in their final report.

Exam. Lawton: They put out two reports, I believe.

The Witness: They put out two reports, sir, and, as I understood it, they were simply reports to the industry of what questions had been propounded, and certain ideas that had been advanced. There were no recommendations being made at all.

Exam. Lawton: At all events, you are in accord with their final report as embodied in the suggested rules; is that it; Exhibit 10, by Mr. Sutherland?

The Witness: Yes.

Mr. Boot: Mr. Examiner, I would like to call your attention to Exhibit No. 9, Report No. 2. The second paragraph states: "It is emphasized that this report does not reflect any action taken by the Committee as such, but is merely a [fol. 1517] summation of what the Committee believed to be the thoughts of the industry." There is no recommendation whatsoever.

Exam. Lawton: I think we have enough on that point.

Do you have any further questions, Mr. Wheeler?

Mr. Burton Wheeler: Yes.

By Mr. Burton Wheeler:

Q. You were here Friday, were you, during the testimony of Mr. Davis?

A. No, I didn't hear his testimony.

Mr. Burton Wheeler: I think that is all.

Exam. Lawton: Does anyone else have any questions?

Mr. Lieberman: Yes, sir.

Exam. Lawton: Mr. Lieberman.

Cross-examination.

By Mr. Lieberman:

Q. Mr. Harris, is there any difference between the control which your company has over its owned equipment, as compared with the control it has over owner-driver or leased equipment?

A. I don't think there is any difference.

Q. Has there ever been any difference in the 16 years that you have operated your company with owner-driver and owned equipment, as to control?

A. I think we have progressed, sir, and as regulations have been introduced, we have put more and more safeguards in, to comply better with regulations. I think there has been a natural advance.

[fol. 1518] Q. Well, for how many years past would you say that the control over leased equipment has been as great as control over owned equipment?

Mr. Burton Wheeler: Just a minute. Are you asking him with reference to his experience?

Mr. Lieberman: Solely as to his own company. All my questions are directed to Continental Transportation Company's operations.

A. I think that is a difficult question for me to answer. I feel that, just as a company is progressing in other fields, we are trying to progress in the field of regulations. For example, recently we adopted a new idea to better insure us of obtaining certificates of physical examination, and the setup with these cards, which I explained, facilitates things a little bit.

By Mr. Lieberman:

Q. For how long a period have you had written leases with your owner-operators on leased equipment?

A. I would say for 15 years, anyway.

Q. Do you at the present time lease only a part of the carrying capacity of any of the leased equipment that you operate?

A. No.

Q. And for how many years have you so operated in leasing the entire capacity?

A. Ever since we have been in business.

Exam. Lawton: Along that line, do you lease the equip-
[fol. 1519] ment of other certificated carriers in your operations?

The Witness: At some times, yes, sir.

Exam. Lawton: Is that just lease of the equipment, or does the other company send a driver with it?

The Witness: No, it is a lease of the equipment.

Exam. Lawton: Just of the truck or trailer?

The Witness: Yes. Generally, it is what is termed in this hearing, I believe, as an interchange. Another carrier uses an owner-operator and has no use for him, and we use him. We find that, at our terminal points, we work with our competitors, even, along that line. If they have no need for operators and the movement of our freight is such that we do, we reciprocate.

Exam. Lawton: Excuse me, Mr. Lieberman.

Mr. Lieberman: That is all right, sir. Are you through?

Exam. Lawton: Yes.

By Mr. Lieberman:

Q. Have you, at any time, lost any traffic, with any of your shippers as a result of using leased equipment? Do you understand that question?

A. Yes. That is a hard question to answer. I think I know what you mean.

Exam. Lawton: Do you mean cargo loss, or loss of business?

Mr. Lieberman: Loss of traffic, sir, loss of business.

A. There have been delays by owner-operators just as there have been delays with our company-employed drivers.
[fol. 1520] Q. Pardon me, Mr. Harris, I don't think you understand my question. Have you seen Mr. Blanning's Exhibit 2?

A. I don't know.

Exam. Lawton: He said he wasn't very familiar with it.

By Mr. Lieberman:

Q. Let me read you, sir, a very short sentence or two, which appears on page 4 of the exhibit. It is headed "Par-

agraph (d) Loss of Contacts with Shippers. The arrangements which carriers make with vehicle owners sometimes results in the latter—". That is, the owner-drivers "—obtaining control of the traffic through contacts which they establish with shippers. After the vehicle owners—" that is the leased operators "—become acquainted with shippers through hauling under lease to a carrier, they haul for the shipper under lease without reporting to the carrier. Owners of a vehicle or of a fleet of vehicles sometimes control certain traffic."

A. We have never had that experience, so far as I know.

Q. There also appears, in this same exhibit, in the next numbered paragraph (e), the following sentence: "Carriers—" which would be a carrier like yourself "—which depend on leased equipment are handicapped during certain seasons when truck owners can get greater returns from the transportation of exempt commodities. Those who depend on gypsies—" and I presume you know what they are "—do not know from day to day what equipment they will have available to transport traffic which is of-
[fol. 1521] fered." Have you met with such conditions in the operations of your business?

A. No, we haven't.

Q. Have you always had available to you equipment of owner-drivers when necessary and when required by the movement of your traffic?

A. Not always a hundred percent. But within a reasonable degree. I think that after a period of years you build up a certain reputation.

Exam. Lawton: Can you hurry it up a little, Mr. Lieberman?

Mr. Lieberman: I would like to pursue this questioning because it is in direct rebuttal of the alleged abuses which were supposedly in effect.

Exam. Lawton: I thought you were prepared to go on.

Mr. Lieberman: I wasn't prepared for this particular witness' testimony. It has only just been put on.

Exam. Lawton: All right.

By Mr. Lieberman:

Q. Have you ever permitted any owner-driver to haul traffic which he has brought to your company, and permitted him to take 100 percent of the revenue from that traffic?

A. No, sir.

Exam. Lawton: I thought I understood you to say that you don't hire any owner-operators on the basis of dividing the revenue.

[fol. 1522] The Witness: That is right.

Exam. Lawton: You pay them all so much a trip or something of that sort; is that right?

The Witness: Yes, sir.

By Mr. Lieberman:

Q. Has there ever been any situation in your company where shippers have had difficulty placing responsibility for the movement of your traffic——

Mr. Eldred: I object to that.

Mr. Lieberman: I submit, sir, I haven't completed my question.

Mr. Eldred: I am sorry.

Exam. Lawton: Complete the question.

By Mr. Lieberman:

Q. Have you had any experience with your shippers when there have been cargo losses or damages, wherein your shippers have experienced difficulty in the placing of liability in respect of your company, and those instances where you have used owner-driver equipment?

Mr. Eldred: I object to the way the question is put, Mr. Examiner.

Exam. Lawton: Overruled.

A. So far as I know, we have had no such—I should say, I know of no difficulty because a bill of lading is issued by us and we are fully covered by cargo insurance to the extent of a hundred thousand dollars per unit, and the claim is made with us and paid by our insurance carrier.

[fol. 1523] By Mr. Lieberman:

Q. Thank you.

Mr. Lieberman: That is all I have, Mr. Examiner.
Exam. Lawton: Does anyone else have any questions?
Mr. Burton Wheeler: I would like to ask one question.

Cross-examination.

By Mr. Burton Wheeler:

Q. You don't know what takes place with a lot of other carriers throughout the country in their operations, do you?

A. Well, I don't mean to pose as an expert on the conditions in the country, no, sir. I know my own business and I know something of the industry generally. I have been in it for 15 or 16 years. I must have gathered a bit of knowledge in that period of time.

Q. Well, you do know, then, that there are a lot of people who are carriers, who do object to this trip leasing?

A. Sure.

Q. And a lot of them have claimed that there are abuses taking place, and that it tends to break down the rate structure. That is one of the complaints they have, isn't it?

A. I don't think it has anything to do with the rate structure. I think there have been abuses and, as I said before, there is no use of killing the cow to eliminate the abuses. You can correct the abuses without killing the practice. That is my whole point.

Q. One of the principal abuses about which they have complained, however, these carriers, has been on this trip [fol. 1524] leasing, has it not?

A. I understand that that is one of the abuses they are complaining about, yes. And I feel, if I might say something, that many people have objected to the use of trip leases out of sheer ignorance, because they don't know how it works, and many operators who own all of their equipment simply make a broad statement that anyone who doesn't own all of his equipment shouldn't be in business, or some such statement. I think it is because of a lack of knowledge on their part.

Q. And it is also because of the fact that they claim that it is unfair competition, is it not?

A. I have never heard that claim. I can't see how it would have anything to do with competition.

Exam. Lawton: All right, Mr. Lordan.

Cross-examination.

By Mr. Lordan:

Q. Mr. Harris, how many pieces of equipment do you have to operate on the average to conduct this business of a gross volume annually of four million dollars a year?

A. About 450.

Q. Your business is not seasonal, is it?

A. No, sir.

Q. It is a general commodity business?

A. Yes, sir.

Q. With operation in six states, I believe you said?

A. Yes, sir.

[fol. 1525] Q. You operate general commodities in six states between fixed termini, if I understood you correctly?

A. That is correct.

Q. Four million dollars a year?

A. That is correct.

Q. And you operate 450 pieces of equipment?

A. I am only approximating that.

Q. Approximately?

A. Yes.

Q. Of the 450 pieces of equipment how many does the Continental Transportation Company, or whatever it is called, own?

A. As I stated before, out of our total gross volume, we handle about 40 percent on our own equipment.

Q. I don't want to know what the gross revenue is on company-owned equipment as against the other equipment. I want to know how much company-owned equipment you have.

A. I am not going to be accurate on this, but I am going to give you a guess: approximately 150 pieces.

Q. You think you get about 150 sets of plates each year from the ICC to operate in interstate commerce, or that you license that many in the various states; is that it?

A. I think at least that many, yes.

Q. Now, of the 150, how many pieces of those are over-the-road equipment?

A. Well, practically, I would say, 80 percent or 85 per-

[fol. 1526] cent of it.

Q. How do you effect your pickup and delivery?

A. With pickup and delivery trucks. Some of it is by leased operation.

Q. You mean you lease pickup and delivery trucks in the various terminals?

A. Yes, sir.

Q. In the six states in which you operate?

A. Yes, sir.

Q. Do you own any pickup and delivery equipment of your own?

A. Yes, sir.

Q. How much?

Mr. Lieberman: I submit he has already testified that he owns 15 percent.

Mr. Lordan: Counsel may object to my method of cross examination; I may not be as accurate or as good as he is, but I am going to conduct it in my own way.

Exam. Lawton: Please don't interrupt.

Mr. Lieberman: I press my objection, sir. The question has previously been answered.

Exam. Lawton: Had you previously answered it?

The Witness: I don't know. I was going to say this, Mr. Examiner: I am frankly not prepared to testify as to the number of pieces of equipment, and I hesitate to do so, sir.

Exam. Lawton: All right, then, don't do it.

[fol. 1527] By Mr. Lordan:

Q. What is your capacity with your company?

A. I am the vice president.

Q. In charge of what activity of the company?

A. I am what is commonly called assistant detail man. I handle the finances, the general sales, the correspondence, the records, and one thing or another. I probably——

Q. Well, I don't want to be——

Exam. Lawton: If you don't know, just say so.

Mr. Lordan: I don't want you to be bound by whatever statement you make here with relation to the actual numbers, but you certainly can give me some sort of an approximation.

The Witness: What I am trying to do, as I go on, sir, I am trying to tell the truth, and I don't want to distort my own figures. And I am afraid I might. I do know this: that of the total amount of business that we do, approximately 60 percent of it is done by owner-operators under lease. That would give you a fair division, because that equipment is used interchangeably with our own, to all intents and purposes. I think possibly we get a little more efficiency out of the use of our own, because of the interchange of trailers. But there isn't that much difference, so that I would say, out of the ten pieces of equipment, that possibly we own three to four and lease six to seven.

By Mr. Lordan:

Q. Do you lease more power units than you do trailers? [fol. 1528] A. Yes.

Q. You own as many trailers as the economical operation of your business requires, in your judgment?

A. No.

Q. Well, you own more trailers than you do tractors?

A. Yes.

Q. And do you engage in trip leasing arrangements with owner-operators who just own tractors?

A. For the most part, no.

Q. It is usually a unit that you engage on a trip lease, is it not?

A. Yes, sir.

Q. An entire truck and trailer unit, or semi-unit?

A. Yes, sir.

Q. You utilize your own tractors in the transportation of your own trailers?

A. Yes.

Q. Entirely?

A. No.

Q. You explained, Mr. Harris, that your experience with an individual owner-operator who owned his own piece

of equipment was uniformly good, with relation to safety and maintenance, I believe.

A. Yes.

Q. And that your experience with him generally, without reference to your safety study, was good because of [fol. 1529] this mechanical aptitude that he has; is that right?

A. I think that is one of the reasons.

Q. That would only hold true, would it not, Mr. Harris, in the instance where the owner-operator drove his own piece of equipment?

A. Yes.

Q. You testified, did you not, Mr. Harris, that in some instances some of these owner-operator operations, on their own account, have grown to some proportions?

A. Yes.

Q. And I think you recited two instances to the Examiner here of one man who owned 25 pieces of equipment and another man who owned 18 pieces of equipment. Now, are there others that own a smaller amount, but more than one?

A. Yes, sir.

Q. How many would you think those would be? From memory. Could you give me any other examples?

A. I couldn't give you any accurate number. There are several whom I could think of who have two pieces of equipment, some have three.

Q. Let's take the example of the man who owns 18 pieces of equipment. Is there any reason that you know of why his operation, with his drivers, is any different than your operation with your drivers?

[fol. 1530] A. In those instances the power units are leased under long-term lease.

Q. Leased by whom?

A. By us. In the instance I gave you, the example of the chap who started out as an owner-operator, with a tractor and trailer, and developed it, those tractors are now leased by us on long-term basis, company-employees operated.

Q. Which company employees.

A. Our company employees.

Q. Well, in the instance of an owner-operator who owns

more than one piece of equipment, he obviously can't drive more than one piece of equipment at one time, can he?

A. No.

Q. So that if he utilizes more than one piece of equipment which he drives in your service, he must employ another driver to operate his piece of equipment.

A. Yes.

Q. Then, he must have the contract with the union, assuming he has a union driver; is that right?

A. No, that is not the way it works.

Mr. Turney: Mr. Examiner, I object to that question on the same ground on which you sustained the objection to Mr. Wheeler's questioning on this problem. We are not here to try any question of union participation, union activities, one way or the other. We are here solely with respect to this leasing question.

[fol. 1531] Exam. Lawton: What is the point of your question, Mr. Lordan?

Mr. Lordan: My question was directed to—well, I will withdraw the question.

Exam. Lawton: All right.

By Mr. Lordan:

Q. Mr. Harris, assume that in your service there is an owner-operator who owns four pieces of equipment, and that he is using them simultaneously in your service. He can only drive one of those pieces of equipment; isn't that right?

A. Obviously.

Q. And he must employ the other three drivers; isn't that right?

A. Yes.

Q. Now, referring you to the three drivers which he employs, is there any difference between the method in which they would operate in his piece of equipment, and how they would maintain it, take care of it, and show mechanical aptitude with relation to its maintenance and upkeep, than if they were employees of yours?

A. Yes, sir, there is a great deal of difference.

Q. Why?

A. First of all, there is a much closer relationship be-

tween these men and the owner of the equipment. I don't know why that relationship exists, but today it is difficult to build up a relationship of that sort between an employee [fol. 1532] and a company. The result is that they will do more to maintain this leased equipment. They will fix it if it breaks down—I mean if it isn't a major job. They will even change a tire. I know that they have. They are interested in having the owner make money. I just don't think that there is the same relationship.

Q. Am I to infer from your statement that they wouldn't perform that same service if they were on your payroll?

A. Yes, sir.

Q. That is your statement?

A. Yes, sir.

Q. Now, Mr. Harris, do you have with you a copy of the lease arrangement that you ordinarily normally enter into?

A. No, I do not.

Q. Could that be supplied?

A. I think I would object to that.

Mr. Lordan: Mr. Examiner, I will ask that the witness be instructed to supply to the Examiner, in view of the fact that his testimony has been offered here as one of the examples of how an owner-operator arrangement with a certified carrier can work very advantageously under the circumstances described, through his counsel, all of the details with relation to the contractual arrangement which is habitually and usually entered into between the company that he speaks for here and the owner-operator.

[fol. 1533] Mr. Boot: Mr. Examiner, I object to that. The witness has testified as to his practice in trip leasing, and the contract he uses is a privileged contract between his company and the owner-operators and is not in evidence at this proceeding.

Mr. Burton Wheeler: Mr. Examiner, if I may say a word, it goes entirely to the credibility of the witness. Here they produce a witness who goes on the witness stand and tells what a wonderful job he is doing, and so forth, but when you ask him to produce the written documents to substantiate his testimony, he says, "I object to it."

Mr. Boot: You are asking for a written contract.

Exam. Lawton: Mr. Harris, do you use the same form of contract in all of your trip leases? Is it a sort of blank form?

The Witness: Yes, pretty much so. There are some variations, but I just don't think it is—I think it is my privilege to retain that.

Exam. Lawton: That is all right, if you want to insist on your privilege. But I think it would be helpful if we had a copy of that form of contract.

The Witness: I will consider it. It is no secret except that I just don't feel that I should publicize all over the country the type of lease that we use.

Exam. Lawton: No, but it might give the Commission an idea. We are investigating leasing.

[fol. 1534] The Witness: Nor did I testify, sir, that I was an example of how a good company should be operated. I have never testified to anything of that sort. I am not holding myself up as an example.

Exam. Lawton: I won't insist on it, but I do think it would be helpful to this investigation to have some idea of the different forms of contracts that the different certificated carriers use. Think it over. If you don't want to furnish it, all right.

The Witness: All right.

By Mr. Lordan:

Q. Mr. Harris, you testified that you recognize—if I understood you correctly, and I made a note of it at the time—that there are certain abuses existing relative to some of these leasing practices, did you not?

A. Yes, sir.

Q. Would you describe what, in your judgment, the abuses are?

A. I think one of the big abuses is allowing equipment to be on the highway unidentified. I think another abuse is allowing equipment on the highway without any evidence of a relationship between that piece of equipment and a certificated carrier.

I think that all leases should be in writing, and many of them have not been, as I understand it.

I could probably give you some others, after looking at it again.

[fol. 1535] Q. That constitutes the summary, as far as you know, at the present time?

A. No. I mean I don't want to be tied down to that. I just haven't got the information in front of me and I am just generalizing.

Q. As I understand it, your arrangement, which you habitually or customarily enter into, is one where you, as you describe, use an owner-operator's equipment between—was it Pittsburgh and New York?

A. Well, between any of our terminal points.

Q. Was that the illustration you used, Pittsburgh and New York?

A. I believe so, yes.

Q. The contractual arrangement, if I understood you right, on that sort of a situtation, begins at Pittsburgh?

A. Yes.

Q. And it ends upon the discharge of the cargo in New York?

A. Yes; or upon arrival at the New York terminal. Not necessarily the discharge of the cargo.

Q. Well, if it is the owner-operator's equipment, you certainly have a contractual arrangement with him until you have your cargo out of his truck, don't you?

A. Yes, I suppose you are correct.

Q. When the cargo is unloaded, what happens to the agreement, if anything?

A. The agreement is terminated.

[fol. 1536] Q. And that is by its terms?

A. Yes, sir.

Q. And is that the habitual, normal or customary type of agreement that you have?

A. Yes, sir.

Q. Then, you have no understanding except which might be implied between friends and business associates to enter into any other further contractual arrangements?

A. Yes; that is right.

Q. He has absolutely no assurance or guarantee that he will again enter your service in a similar contractual arrangement?

A. No, sir.

Q. For service from New York to Pittsburgh or any place else?

A. He has no guarantee.

Mr. Lordan: I think that is all.

Exam. Lawton: We will take a five-minute recess.

(Recess taken.)

Exam. Lawton: Come to order, please.

Mr. Lordan: On examination of my notes, I find I have a further question, Mr. Examiner.

Exam. Lawton: Proceed.

By Mr. Lordan:

Q. Mr. Harris, referring you again to the operation of the 25 pieces of equipment operated by one owner-operator, and the 18 pieces of equipment owned by another owner-operator, do you have a different sort of leasing arrange-
[fol. 1537] ment with those individuals than your general, normal operation?

A. Yes, sir.

Q. Then, you have two types of leases that you ordinarily enter into?

A. Yes, sir.

Q. Will you describe the one with relation to the owner-operators of 25 pieces and 18 pieces?

A. One of them is a long-term lease and the other is a trip lease. Both require maintenance of the equipment by the owners, and the supplying of oil, gasoline, tires. That is essentially the difference.

Q. When you say a long-term lease, with relation to the man who has 18 pieces of equipment, do you lease his trucks, tractors, and trailers—for how long a period?

A. Those are just tractors.

Q. You just lease the tractors?

A. Yes.

Q. Does he own the trailers?

A. No.

Q. You own the trailers?

A. Yes, sir.

Q. And how long a period of time are these leases for?

A. Generally for a year—renewable.

Q. Generally for a year?

[fol. 1538] A. Yes, sir.

Q. Are they all on a yearly basis?

A. No, actually in some cases they are—I wouldn't say they were uniform at all. If my memory serves me correctly, I think they are for a year and renew themselves automatically.

Q. Now, the drivers of those pieces of equipment are not your employees, are they?

A. Yes, they are.

Q. Are they your employees?

A. Yes.

Q. On your payroll?

A. Yes.

Q. The investment is not yours, however?

A. No.

Q. And the responsibility for the maintenance of that equipment is not yours?

A. No.

Q. And the investment, if any, required for shops, tools, mechanics, with relation to that equipment, that is not yours, is it?

A. That is correct, it is not.

Q. Do I understand that you consider that that type of an operation is more economical for your company than the ownership, in your company, of the 25 pieces of equipment?

A. Yes.

[fol. 1539] Q. So that actually the owner lessor or lessee, in that particular instance, has the investment and responsibility of maintenance?

A. Yes.

Q. And it is cheaper for you?

A. In my opinion, I think it is. There is a difference of opinion, even in our own organization.

Q. You have the certificate of public convenience and necessity which permits the operation of the entire 450 pieces; is that right?

A. Yes.

Q. None of these owner-operators have any certificates of convenience and necessity from the Commission?

A. No.

Q. Or any authority from the Commission?

A. That is correct.

Q. What is this minimum or guarantee of payment or compensation that you have on the operator, say, from Pittsburgh, as you explained, to New York?

A. We have the same guarantee in all of our trips. We guarantee 24,000 pounds.

Q. You guarantee 24,000 pounds?

A. Yes, sir.

Q. Now, assume that they only total 20,000 pounds on the particular trip that the owner-operator has to carry. What is your obligation in that regard?

[fol. 1540] A. He is paid on a trip basis, the same basic pay. The only difference is if it is more than 24,000 pounds, in which case he is paid proportionately more.

Q. Mr. Harris, assume, for the purpose of my question, that the transportation between Pittsburgh and New York is a first or second class rate; is that taken into consideration?

A. No.

Q. He gets 24,000 pounds of what kind of revenue?

A. There is no relationship to revenue. He is paid so much a ton for the trip. Obviously it is a different rate as between Pittsburgh and New York than between Pittsburgh and Cleveland, because of the mileage, and that is based upon 24,000 pounds. So that if he carries 10,000 pounds, regardless of the type of commodity, or the rate, he is paid the same.

Q. If he carries more than 24,000 pounds, what is the situation?

A. He is paid proportionately more, based on the trip rate.

Q. Well, assume, for the purpose of my question, that it was 28,000 pounds; does he get the same amount per ton above 24,000 pounds as he got for the 24,000 pounds?

A. Yes.

Q. Are all of the employees—driver-employees—of your owner-operators, on your payroll?

A. No.

Q. Is that only true with relation to the ones where you long-term-lease the tractors?

[fol. 1541] A. Yes, sir.

Q. How many contractual owner-operators do you norm-

ally have in connection with your operation, to supply you with 300 pieces of equipment?

A. I am afraid I didn't understand that question.

Q. You operate approximately 450 pieces of equipment?

A. I said when I answered that question that it was difficult.

Q. Well, approximately.

A. Because it fluctuates.

Q. Approximately. Would it be 450 approximately?

A. Yes, I would say so.

Q. And you own approximately 150 pieces of equipment?

A. Yes.

Q. So that you have contractual arrangements of one kind or another to supply your operation with 300 pieces of equipment?

A. Yes, about that.

Q. The drivers of those 300 pieces of equipment are not on your payroll?

A. That is right.

Q. Do I understand you correctly to say that the only instance in which they are on your payroll is where you long-term-lease the tractors?

A. Generally speaking, that is true.

Q. If a man has two pieces of equipment, and he operates one, isn't the driver of the other piece of equipment on [fol. 1542] your payroll?

A. No.

Q. The maintenance of none of these 300 pieces of equipment is a responsibility of your concern?

A. That is correct.

Q. Nor is the investment——

Mr. Diehl: It is repetitious, Mr. Examiner.

Exam. Lawton: It has already been answered a number of times, Mr. Lordan.

Mr. Lordan: I am through.

Mr. Burton Wheeler: I have one question.

Exam. Lawton: Very well.

Cross examination.

By Mr. Burton Wheeler:

Q. The owner-operator carries your markings on the trip lease, does he?

A. Yes, sir.

Q. When he reaches New York from Pittsburgh, let us say, do you change the markings on his equipment there in New York?

A. If he runs back for us, we don't.

Q. I mean supposing he doesn't run back for you.

A. Then, the sign is removed.

Q. Then, the sign is removed?

A. Yes, sir.

Q. He is free, when he reaches New York, to go out and pick up a shipment from a shipper or anybody else that he [fol. 1543] wants to pick it up from, is he?

A. He is free.

Q. He is free to pick that up?

A. Yes, sir.

Q. Do you know whether or not that frequently happens?

A. I don't think it does. Of course, I wouldn't have any way of knowing.

Q. You wouldn't have any way of knowing?

A. No. The only way I can know is that over this period of years, the same men have been working with us.

Q. I understand that, but is it not common knowledge that when they are released in New York that they try to pick up a shipment coming back?

A. Yes, it may be a competitor, as I said before.

Q. It may be a competitor, maybe a shipper or maybe anybody else.

Mr. Diehl: I object to the statement by the Senator as to a shipper.

Mr. Diehl: You weren't asking it. You were stating it. He hasn't said that the men haul for shippers without his knowledge. He said to the contrary.

Exam. Lawton: Let's not have this argument.

The Witness: I have no knowledge of these men hauling for shippers.

[fol. 1544] By Mr. Burton Wheeler:

Q. You haven't any knowledge?

A. I have no personal knowledge.

Q. But he would be free to do that, would he not?

A. Just as free as anybody else.

Q. Surely. And you would have no control over the hours of service or the rates or anything else in that instance?

A. The only control we have is when he is employed by us.

Q. The amount you pay him doesn't depend upon the classification of the goods that he hauls?

Mr. Lieberman: I object to that on the grounds that it is repetition.

The Witness: The answer is no.

Exam. Lawton: He has already answered that.

Mr. Burton Wheeler: I think that is all.

Cross examination.

By Mr. Todd:

Q. Mr. Harris, how many over-the-road tractor units does your company own?

A. I am really not prepared to answer that question.

Q. Do you know whether they own five, ten, fifteen?

A. I would say possibly 20.

Q. Over-the-road?

A. Yes, sir.

Q. And then you have some 38 over-the-road tractor units that are under so-called long-term lease?

[fol. 1545] A. Well, it might be more than that.

Q. Do you know how many you do have under that type of arrangement?

A. No, I don't.

Q. With respect to these tractors that you own yourself—that is, that the company owns—I take it that the company is completely responsible for the operation of those vehicles at all times on the public highways; isn't that correct?

A. We are responsible for all of the equipment, regardless of whether we own it or lease it.

Q. Well, now, if you will just answer my questions one at a time, Mr. Harris, I will get to each one of them.

A. The answer is yes.

Q. Now, with respect to motor vehicles that you have under a long-term lease, you likewise are responsible for the operation of those motor vehicles during the term of the lease at all times; isn't that correct?

A. Yes.

Q. With respect to the trip-lease vehicles—taking the example which has been used here before—when the vehicle is loaded with your freight moving from Pittsburgh, Pennsylvania, to New York City, your company is responsible for the operation of that vehicle on the public highways while it is making that trip; isn't that correct?

A. Yes.

[fol. 1546] Q. Is it my understanding that your responsibility for the operation of that motor vehicle terminates at New York City when the cargo is discharged and the lease arrangement is brought to an end?

A. In this example, it would, yes.

Q. On the trip lease?

A. Yes.

Q. I believe also in your direct testimony you said that under certain circumstances a vehicle would be sent from Pittsburgh to New York with a load, and then if you didn't have a load at your New York terminal that it would be sent to either your Newark or perhaps even your Trenton, New Jersey, terminal for a load?

A. Yes.

Q. When that vehicle is traveling from New York City to Newark or Trenton, New Jersey, it is not under any lease arrangement with your company, is it?

That is if the lease is terminated in New York City at the time the cargo is discharged.

A. There might be some technicality to that. It is under our control and we would have responsibility for it.

Q. Where you contemplated using it at Newark or Trenton, you send it there to Newark or Trenton, you would feel that it was your responsibility and that you would be responsible for the operation of the vehicle from New York to Trenton; is that correct?

[fol. 1547] A. Yes.

Q. Suppose you have no load at New York, nor at Newark nor Trenton, but one of your competitors, whom you know, and with whom you say you cooperate in the use of these trip leases, does have a load at Newark or Trenton, and this owner-operator, who is on a trip lease basis, moves from New York to either Newark or Trenton; is it then the responsibility of your company, that is, that trip that the owner-operator is making?

Mr. Boot: Isn't that a legal question, Mr. Examiner?

Exam. Lawton: Read the question.

(Question read by the reporter.)

Exam. Lawton: If the trip lease had terminated, it would not be, would it? I think that would be obvious.

Mr. Todd: I just wanted the witness' testimony.

Exam. Lawton: Do you consider that it is your responsibility?

A. I wouldn't consider it such.

By Mr. Todd:

Q. You were also testifying on direct examination with respect to the accident incidence, using owner-operators. I believe your study included some 396 owner-operator trips, I take it; is that correct?

A. Yes.

Q. I mean in using that study, you were speaking of trips; is that correct?

[fol. 1548] A. No. In that period of time there were 396 owner-operators used.

Q. You don't know how many trips they made?

A. I know that 155 of that group worked under single trip leases.

Q. And you said that that 155 who were under single trip leases traveled some 70,000 miles with no accidents, to your knowledge?

A. Yes, sir.

Q. Do you know whether, prior to the time those trip lease operators—the 155 trip lease operators—made connections with another carrier for a load, whether they had any accidents?

A. I wouldn't know.

Q. That would be no responsibility or concern of yours, would it?

A. Well, it might be concern, but I wouldn't know.

Q. Your testimony has been here that your company operates pretty much over regular routes through several states. Over any of your routes do you have a situation where your traffic is unbalanced in one direction or in another?

A. Yes.

Q. And do you know between what points that is true?

A. Well, it is generally unbalanced east and west. In other words, there is a predominance of freight moving from the west into the east. It has always been true.

Q. So that you really have, for example, need for more vehicles moving out of Pittsburgh into New York City than [fol. 1549] you have in the reverse direction; is that correct?

A. Yes.

Q. In your experience in operating this line, don't you find that it is particularly advantageous to your company, economically, to be able to use the trip leases from Pittsburgh into New York City?

A. Yes.

Q. And do you know of any operators who operate between those two points who own and operate all of their own motor equipment?

A. Between Pittsburgh and New York?

Q. Yes, sir.

A. I don't know of any. I don't think there are.

Q. Well, perhaps you will answer this hypothetical question for me, Mr. Harris: If I, as a common carrier over regular route between Pittsburgh and New York City, undertook to own and operate all of my own motor equipment between those two points, and was responsible for getting it back to Pittsburgh for loads, wouldn't I be operating at a disadvantage economically with those operators who avail themselves of the trip lease operations?

Mr. Boot: Mr. Examiner, I object. The example is not in conformity with the testimony given.

Mr. Todd: Would you read it back? If it isn't Mr. Examiner, it is certainly an oversight on my part.

[fol. 1550] Would you read it?

Exam. Lawton: Read it.

(Question read by the reporter.)

Mr. Boot: His testimony, your Honor, was that to his knowledge no other carrier in Pittsburgh operating over the same routes owned all of his equipment.

Exam. Lawton: That is right.

Mr. Todd: I prefaced my question, Mr. Examiner, with the statement that it was a hypothetical question.

Exam. Lawton: Well, that assumes facts which are not proved or are to be proven. He can answer that, based on his experience.

The Witness: Well, I can answer it better this way: If you have the impression that, because there is a greater flow of traffic from the west to the east, we then indiscriminately take owner-operators under trip leases and throw them into the east in order to get that traffic moved, you are under the wrong impression, because that isn't the way it works. Your operation must be more or less balanced. Otherwise you would never be able to maintain your business equilibrium. You could keep these fellows over about a couple of weeks. After that you couldn't keep them. So that while there isn't any obligation on our part to load them back when they get to the east, it is to our advantage to load them back so that we don't send any more to the [fol. 1551] east than we can conscientiously believe we can get back. And we have teletype between our offices and we try to adjust it in that way.

Now, there is a greater volume moving to the east and it is never quite balanced. But that might mean that they will go into the east heavier than they will come back out.

By Mr. Todd:

Q. Then, under ordinary circumstances, I take it, Mr. Harris, if the owner-operator is under a trip lease that you send from Pittsburgh into the east, you provide him with a load coming back into Pittsburgh or the immediate surrounding area?

A. We don't obligate ourselves to do it.

Q. I didn't say that. I say under ordinary circumstances, you do.

A. For the most part, we have the same group of operators working for us day in and day out.

Q. And you attempt to provide them with a balanced load; is that correct?

A. Yes.

Q. Then, what disadvantage would it be, in the operation of your business, to, instead of using these men on a trip lease basis, use them on a long-term basis so that you would be responsible for them at all times that they were on the highways?

A. Well, first of all, in the period of three months that I surveyed, there were 155 single trip leases, which would [fol. 1552] have meant that we could not have served customers represented by 155 truck loads of freight during that three-month period.

Q. Why not?

A. Because we wouldn't have had equipment available. The fact that we used 155 single trip leases in that three-months period is evidence of the fact that we didn't have sufficient of our own equipment—whether it was because it was unbalanced or whether it was because of an upsurge in business all at once, I don't know.

Q. Couldn't you put those 155 trip lease operators under some sort of a term lease rather than a trip lease? Then you could have handled the traffic, couldn't you?

A. Well, first of all, I can't tell you whether those 155 leases were all in one direction or not. Nor could I tell you whether they were in the same territory. In other words, one of them might have been between Pittsburgh and Dayton and the other one might have been between Pittsburgh and New York. A third might have been between Dayton and Baltimore.

Q. Does the fact that they would have been between any of the given points that you have stated there make any difference with respect to your ability to have entered into a term lease with them rather than a trip lease?

A. Yes, sure it would have.

Q. What difference would it make?

[fol. 1553] A. Don't you see that if one of these men had been dispatched, we will say, from Pittsburgh to Dayton, he is now in Dayton, and if we needed a trip from Pittsburgh to New York, he wouldn't be available. He would be

available if Dayton needed a trip to New York or to any of our other terminal points.

Q. When he was under the trip lease, if he went from Pittsburgh to Dayton, and was in Dayton, and you needed a truck at Pittsburgh to go to New York, he wasn't available to you then, either, was he?

A. No.

Q. So that it is all the same thing. That doesn't have anything really to do with the effect that it would have had upon your business, had these owner-operators been under some sort of a term lease, rather than trip lease?

A. Sure, it does. The fact that there were 155 single trip leases—that is, men who made only one trip for us during that period of time—indicates to me, at least, that those 155 trips were brought in to take care of an unbalanced situation which existed at that particular time. It enabled us to serve customers that we would not have been able to serve otherwise.

Q. After they completed their trips, what happened to them?

A. That, I don't know.

Q. With respect to the motor vehicles that you have under permanent lease arrangement, Mr. Harris, in your testimony you have stated that the drivers or their employees furnish their logs to you just the same as the driv- [fol. 1554] ers who drive company-owned equipment; is that right?

A. Yes.

Q. So that with respect to those particular drivers, you always know, by looking at their log, at least whether they have been on duty or off duty for the last 24 hours and the number of hours that they have been on or off duty for the preceding 60 hours; isn't that correct?

A. Yes.

Q. Of course, you don't know whether they have slept or what they have done in that time. But you either know whether they are on or off duty; isn't that correct?

A. Yes.

Q. If one of these 155 operators that you used under a trip lease basis goes for you from Pittsburgh to Dayton—I take it you have another terminal there?

A. Yes.

Q. —and he arrives at Dayton and just decides that he would rather not work for a couple of weeks, and decides to take a little vacation, have you any control over his activities with respect to taking that vacation or taking his vehicle with him?

A. No, I have answered that before. It is just a lease.

Q. With respect to either the equipment that you have on a long-term basis or the company-owned equipment, do you have any control over a situation of that kind?

[fol. 1555] A. Sure.

Q. So that the control that you have over the single trip lease operator and that which you have over either your company-owned equipment or the equipment that you have under a long-term lease, does differ, doesn't it?

A. It differs, sure, but if I could interject an opinion there——

Q. Well, maybe upon redirect examination——

Mr. Diehl: Well, you would like to explain your answer?

The Witness: Yes.

Mr. Diehl: He has a right to, Mr. Examiner.

Mr. Todd: Mr. Examiner.

Exam. Lawton: Oh, yes, we are not going to hold him down to some admission, if he wants to qualify what he said.

The Witness: I was going to say that to my way of thinking I can't see any difference between the single trip lease and the lease, we will say, for 30 or 60 or 90 days, because the same problems exist even to a greater extent in the longer-term leases. Supposing that you enter into a lease with an operator for 60 days in place of a single trip, and after a single trip he decides he wants to take a vacation, the position of the company, or the carrier, is much worse in my opinion, because I assume there would have to be a suit for breach of contract, or I don't know what the ramifications of that sort of thing would be. But certainly he would be made responsible under the law for breaching his contract and that is as far as you do go.

[fol. 1556] By Mr. Todd:

Q. Well, of course, that is simply, Mr. Harris, because in this country a good many years ago we got rid of slave

labor? I mean the same thing would be true of an employee of yours, if he walks in and says, "I don't want to work for the next two weeks"?

A. Sure.

Q. You can't force him to work?

A. That is right. My point was that the extension of the lease from one trip to 30, 60, 90, or 120 days wouldn't correct the abuse.

Q. I believe you have also testified on direct examination, Mr. Harris, that in working these trip leases, and your own equipment, I take it, and permanently leased equipment, that you cooperate with other carriers, and if you don't have a load coming back and they do, maybe they will lease your equipment for that purpose. Isn't that the substance of a part of your direct examination, that lease?

A. I meant to convey that those operators working under trip leases, these owner-operators, when they get to a terminal point, if we can't load them up, very often our competitors will. Or non-competitors.

Q. Is that same thing true with respect to your own equipment?

A. Yes.

[fol. 1557] Q. If you had it in New York, and you didn't have a load, isn't there a possibility that you might trip lease it to a competitor who did have?

A. We have never done it.

Q. Have you ever done that with any of your permanently leased equipment?

A. No.

Q. If you were able to work out such arrangements—that is, with your competitors—so that you could work together in leasing equipment with one another, would there be any particular disadvantages to your company to have all of your vehicles that are under lease under a term lease rather than a trip lease?

A. Yes.

Q. If everybody else had to do the same thing and there were no more gypsy operators.

A. Well, of course, I never liked the term "gypsy operator."

Q. Well, itinerant trucker or——

A. Because these men are, in my opinion, pretty reputable businessmen.

Q. I don't mean any reflection upon them. That is just a term that I borrowed from the industry, Mr. Harris.

A. I always objected to the use of that term because I know these men intimately. I don't think they are any more like a gypsy than I am. I don't consider that I am one.

[fol. 1558] Q. Well, now, would you answer my question?

A. I don't think it would be satisfactory.

Q. Why not?

A. Well, because it wouldn't allow any more flexibility than if one owned all of his equipment. I think the reason that the industry has advanced to the stage to which it now has is because of the flexibility afforded by owner-operators. I think that has been a very important reason.

Q. Wherein would the flexibility be destroyed?

Exam. Lawton: You mean if trip leasing were prohibited?

Mr. Todd: Yes, sir, and you allowed the term leasing to the certificated carriers and permitted carriers to lease among themselves.

The Witness: Well, that practice, as I understood it, has always been permitted.

Mr. Todd: That is right.

By Mr. Todd:

Q. What I am talking about is not eliminating trip leasing altogether, but limiting trip leasing between authorized carriers. Wherein would that interfere with your type of operation?

A. Well, there would be a great big question, first of all, of whether, in Pittsburgh, for example, any of our competitors would have equipment at the particular time. Generally, a movement of freight, even in commodities general, is seasonal to some extent. I mean there are peaks, and when we are busy in Pittsburgh our competitors are [fol. 1558a] generally busy, too.

Q. And you are all competing for these trip lease operators at that time, too, aren't you?

A. I assume so, yes, sir. I assume so.

Q. So what other objection is there to an arrangement of that kind?

A. Well, I think that would be the primary objection, in that you would eliminate entirely the flexibility afforded by the use of trip leases.

Q. Wherein would you eliminate that flexibility except with respect to the one statement that you would all be needing equipment at the same time?

A. Well, that is pretty basic.

Q. But today you still have that situation where you all need equipment at the same time; isn't that correct?

A. I assume so, yes. But we have been using trip leases.

Q. That is correct. And you have all been competing for the trip lease operator at that time, when you needed the equipment; isn't that right?

A. Well, if you call it competing, I suppose so, yes.

Mr. Todd: That is all. Thank you.

Exam. Lawton: Are there further questions?

Mr. Driscoll: I have a few questions.

Cross examination.

By Mr. Driscoll:

Q. Do you handle any traffic to intermediate points or [fol. 1559] is all of your traffic terminal to terminal?

A. The major part of it is. We carry some to intermediate points, but the equipment ends at a regular terminal point.

Q. But your certificate gives you the right to haul freight to and from intermediate points?

A. Yes, sir.

Q. But you don't go after that business very heavily, I suppose?

A. Oh, yes.

Q. You do?

A. Yes.

Q. Does your company pay for the loading and unloading of the truck? Do you put the freight on the man's truck and take it off?

A. Yes, sir.

Q. Your operator?

A. Yes, sir.

Q. Say he unloads at an intermediate point, who does the unloading there?

A. The consignee.

Q. The consignee unloads?

A. Yes, or, if it is a connecting line, why, they do it.

Q. But I mean this dropping off of freight at an intermediate point, destined to that intermediate point.

A. Generally in our operation, sir, it is solid truckloads. Otherwise we handle it out of a terminal point.

[fol. 1560] Q. You operate, I believe, in six states. Is it necessary that the equipment that you lease carry six different license plates?

A. No. There are reciprocal arrangements.

Q. And the owner-operator provides his own license?

A. Yes.

Q. You do not require the owner-operator to give you a bill of sale for any equipment, do you?

A. No, sir.

Q. I understand that some do. When you rent a truck, do you rent the accessories, too, or when you lease?

A. Yes.

Q. You lease the tarpaulin, for instance?

A. Yes, sir.

Q. You lease the safety equipment?

A. We lease the truck in its present condition.

Q. Whatever it is?

A. Yes.

Q. If it needs more safety equipment than you find on there, you augment that, do you?

A. We insist upon it being put on.

Q. At whose expense?

A. The owner's.

Q. Now, as to responsibility to the public, you say you carry cargo insurance.

A. Yes, sir.

[fol. 1561] Q. Are there any instances where you charge claims up to the owner-operator?

A. No, sir.

Q. Does your company use the Pennsylvania Turnpike to any extent?

A. Yes, sir.

Q. Do you, the company, or the owner-operator, pay for the tolls?

A. The company pays the tolls.

Q. And that is true of ferries and bridges, and other tolls?

A. I don't believe it is true of bridges. There is, I think, a bridge toll between Pittsburgh and New York that the company doesn't pay. We pay all Turnpike fees—we insist upon them going over the Turnpike. That is a safety measure.

Q. You operate through Wheeling?

A. Yes.

Q. There are two toll bridges there.

A. We don't operate very much down that way. Most of our operation in Ohio goes over Route 22.

Q. Well, if the truck is driven by your regular employee or your own equipment, do you charge for tolls at New York?

A. No.

Q. So you make a distinction, then, between your own regular employee and the owner-operator in some instances, on the matter of tolls?

[fol. 1562] A. Yes, that is set up in the arrangements made with the owner-operator. We say we pay so much per trip, based on so much tonnage, and we pay Turnpike fees.

Q. Do you have any owner-operated equipment that is painted to conform to a company fleet?

A. Yes.

Q. That equipment you keep, I suppose, more or less permanently in your service?

A. Yes.

Q. Do you pay for the painting of that?

A. Yes.

Q. On the matter of compensation, I believe your company does not employ any operators working on a percentage?

A. No, sir.

Q. Would you call yours a tonnage basis, or a mileage basis, or a combination of the two, or something like that?

A. I suppose so.

Q. We have had a number of rate increases recently, it seems. Do you adjust your charge or your payments to reflect the additional money you are getting?

A. We did.

Q. You had to do that to meet the competition of those who were working on a percentage?

A. I don't know. We thought it was only fair. We were getting more, their costs went up, so we adjusted it.

[fol. 1563] Q. Well, that is probably one of the reasons why the increase was granted, because operating costs had gone up.

A. Yes.

Mr. Drjscoll: That is all. Thank you.

Mr. Eldred: Mr. Examiner.

Exam. Lawton: Mr. Eldred.

Cross examination.

By Mr. Eldred:

Q. Mr. Harris, I believe you stated that your company owns at the present time 20 tractors, approximately; is that right?

A. I think so.

Q. How many tractors do you operate approximately at the present time?

A. I wouldn't know, Mr. Eldred.

Q. Then, you stated that the company operates approximately 450 pieces of equipment. How many of those 450 pieces are tractors? Could you give me some idea?

A. No, I am afraid I cannot.

Q. Well, could you tell me whether this is about the same number you owner in 1940—20 tractors?

A. That is exactly the reason I didn't want to tie myself down with figures, because, frankly, I am just guessing on these figures as to company-owned and company-leased, except to the extent that this survey would show.

Q. Well, now, you ought to know whether the number of tractors company-owned has increased or decreased [fol. 1564] since 1940.

Mr. Turney, Jr.: Mr. Examiner, I object to this. We have been through this three or four times. The witness

says he doesn't know. In any event, the witness said he didn't know. He said it to three or four people now. And I submit we are just never going to finish this hearing if we go on this way.

Exam. Lawton: If we are going to spend a half day with one witness, we will certainly take forever to get through.

Mr. Eldred: I haven't asked any question that has been asked before, Mr. Examiner. If he doesn't know, all right, let him say so.

Exam. Lawton. All right.

Mr. Eldred: I asked him a simple question as the vice president of the company, who has been with it 15 years. Certainly he ought to know whether the number of tractors which the company owns has increased or decreased since 1940. I think that is a perfectly proper question of this witness.

Mr. Turney, Jr.: I submit it has no materiality in this proceeding whatsoever.

Mr. Eldred: That is your viewpoint.

The Witness: I think it has increased, but I am not sure.

By Mr. Eldred:

Q. Approximately what was your revenue in 1940?

A. I wouldn't know.

Q. All right. I will put in an exhibit showing those things.

[fol. 1565] Now, as I understand it, you do not pay on the basis of percentage of revenue. Do you see any objection to prohibiting payment on that basis?

A. I always did personally, because I can't see any relationship between the revenue realized from a truckload of freight and the remuneration to be paid to a man for taking that over the road.

Q. Now, as I understand it, you have your own employees operating a certain amount of leased equipment.

A. Yes.

Q. Have you had any difficulty with that arrangement?

A. I don't think we have had any difficulty.

Q. You have stated that certain uses are made of unidentified equipment. Can you tell me how the proposed

rules of the ATA would strengthen the present rules as regards the requirement that all equipment be operated by a carrier properly identified?

A. Well, actually, I think—and this is my own opinion—that the Commission presently has sufficient power to regulate this industry, even without these proposed rules. The ATA proposed rules, as I recall, substitutes a temporary sign for a more permanent type of sign. The thought in back of that, I assumed, was that the temporary sign would be more easily washed, en route, and that the permanent sign would be better evidence of the carrier relationship. I think that that is an improvement.

[fol. 1566] Q. In other words, you mean that making it out in tin rather than cardboard? Is that the only distinction you have?

A. I say that that is an improvement over a paper sign, I think.

Q. Is there any rule of the Commission which specifies a paper sign?

A. No.

Q. Doesn't it say that it shall be painted on the vehicle at the present time?

A. I think that the Commission has condoned the use of paper signs for some years. I think so long as the vehicle is sufficiently identified, they have condoned it.

Q. Now, in connection with your statement that the contract is in writing, the mere fact that a contract is in writing doesn't say how it is going to be carried out, does it?

A. No.

Q. And you know that there are a lot of contracts today that are in writing which are not carried out in the manner in which the contract states?

A. I wouldn't confine that to the motor transportation industry.

Q. No, that is true.

A. Yes, sir.

Q. So in so far as putting it in writing, that isn't going to solve very much, is it?

A. Well, I think it is going to help considerably, because at least the terms will be clearly understood.

[fol. 1567] Q. Now, Mr. Harris, I understand that you

have a terminal at Philadelphia, do you, and at Trenton, Newark, and New York; is that correct?

A. Yes.

Q. Let us take, for instance, your terminal at Trenton. How many employees do you have there, sir?

A. That is a very small one, and a new one.

Q. Yes.

A. I think we have two employees there.

Q. What are they? What is the nature of the employees you have there?

A. We employ a dispatcher and a solicitor. We also have arrangements with a carrier who employs loaders and unloaders to load and unload our equipment.

Q. What is the situation in Newark?

A. In Newark we have just completed building a very modern terminal, and we have, I would say, 50 employees.

Q. Take, for instance, this terminal at Trenton. You pick up business at Trenton headed west?

A. Yes, sir.

Q. And some of your leases start at Trenton; is that correct?

A. Yes, sir.

Q. What safety inspection is made at that point, where you take over these trucks?

[fol. 1568] A. The dispatcher.

Q. What are his qualifications for that work?

A. Well, we try to employ men who are qualified, who understand the safety regulations of the Commission, who understand something of the mechanics of a truck, and I think that is sufficient. It has worked in the past.

Q. Does he submit a written report of this inspection?

A. No, sir.

Q. Is that true in connection with all of your owner-operators from whom you lease equipment?

A. I would say that was fairly true. The only written report we would get would be if it wasn't equipped properly.

Q. Then it would be a fair statement to say that less than half of your equipment is owned by the company?

A. Yes, sir.

Q. So that, as a matter of fact, you have no definite assurance, or no guarantee, which you can give the ship-

ping public, that you can move over half of the freight that is now being offered; would that be true?

A. No, I don't think that is true. We wouldn't guarantee a shipper to move any freight unless we had equipment available to move it.

Q. Well, then, can we say this: if tomorrow these owner-operators should desire to go elsewhere, you would have absolutely no control over them, and that half of the volume which you are moving today you would be unable to move? [fol. 1569] A. That is true, but it hasn't happened in 15 or 16 years.

Q. Now, these 155 pieces of leased equipment which you spoke about here—I am sorry, I wasn't here at the beginning—was that for the period of three months?

A. Yes.

Q. These owner-operators just happened to be there at that time so that you could perform the service with these trip leases; isn't that true?

Mr. Diehl: Now, Mr. Examiner, Mr. Eldred has a perfect right to cross examine, but he is suggesting the answers in his words, illustrated by the last question, and I object to the nature of it and the framing of the question. This witness' testimony has been to the effect that he has had people working for him for years, and to state that they just happened to be there is an effort to distort the testimony of this witness. They are there doing business with this man on a daily basis and he has so testified.

Mr. Eldred: As I understand his cross examination—furthermore, this is cross examination.

Mr. Diehl: I understand that.

Mr. Eldred: When Mr. Todd cross examined him, he didn't know very much about these 155, whether he saw them before or since. . . . tell me——

The Witness: I will answer the question. If you will tell me——

[fol. 1570] Mr. Eldred: Will you read the question, please?

Exam. Lawton: Read it.

(Question read by the reporter.)

The Witness: I think that is true, yes. Whether they happened to be there or whether we got them there, I really don't know.

By Mr. Eldred:

Q. Is the compensation which you pay to your own operators less from Philadelphia and Camden, New Jersey, than it is from New York City?

A. Yes.

Q. Then, if an owner-operator going from Pittsburgh to New York, then you told him to go from New York to Camden or Trenton to pick up a load, would you feel that under those circumstances he was under your control from——

Exam. Lawton: That has already been asked and answered, Mr. Eldred, I am sorry.

Mr. Eldred: I don't think that under the circumstances there has been any question made out as to whether that compensation is different. Assuming that the pay was the same, there is no testimony that the rate which the carrier received from Trenton and Camden was less than it was from New York and Newark.

Exam. Lawton: I thought your question related to control.

The Witness: You want to know, Mr. Eldred, whether or not, if we should dispatch a tractor-trailer from New York to Trenton, whether we would compensate him for [fol. 1571] that trip; is that your question?

By Mr. Eldred:

Q. No. My question is if any accident occurred on the highway, would you be responsible.

A. I think we would. We would be covered because he would be under our control and direction. We would have directed him to go there.

Q. Although you are not paying him for that?

Mr. Lieberman: I object. He was asked his opinion, and stated his opinion.

Mr. Eldred: Would you give him any compensation from New York to Trenton, Mr. Harris?

The Witness: That would happen very, very seldom,

first of all. And I don't think we would give him any compensation. More often it would happen between New York and Newark, which is a matter of about ten miles, I believe. We would very, very rarely—I gave that as an example—send an owner-operator from New York to Trenton. But quite frequently from New York to Newark or vice versa. And we have sent——

Exam. Lawton: Don't volunteer any more, Mr. Witness.

The Witness: All right.

Mr. Eldred: That is all.

Mr. Evans: Mr. Examiner.

Exam. Lawton: Mr. Albert Evans.

Cross examination.

[fol. 1572] By Mr. Evans:

Q. Mr. Harris, do you feel that the individual owner-operator, the man who owns and operates his own truck in the employ of your company is an employee of the company?

A. No.

Q. What is he?

A. I think he is an independent contractor.

Q. When one of these owner-operators approaches your representative, Mr. Harris, to ask for a load, does he have any voice in the manner in which he will be paid?

A. To ask for what?

Q. To ask you for a load. When he asks your company or your representative for a load, does he have any voice in the manner in which he will be paid—the rate of return?

A. Sure, he is a contracting party.

Q. Who determines the rates which you pay these owner-operators? I am talking only of the man who owns and operates his own equipment. Who determines the rates you pay these men?

A. That is determined by the company.

Q. The owner-operator, either individually or collectively, has no voice in setting that rate?

A. Actually, he does, yes.

Q. In what way?

A. Well, we sit down with a group of them from time to time and set rates.

Q. Do you allow them to bargain with you, or do you accept suggestions?

[fol. 1573] A. I wouldn't know how to answer that question.

Q. In other words, if an owner-operator said that he wanted $7 a ton from Cleveland to New York, and the company said $6.50, what would be the rate?

A. The company rate.

Q. Does he have any voice——

Exam. Lawton: Just a minute. What was that answer?

The Witness: The company rate.

By Mr. Evans:

Q. Does he have any voice in the sort of load he will haul?

Mr. Turney, Jr.: Mr. Examiner, I didn't object up to now because I thought each one would be the last one. I submit that the collective bargaining of any sort has no place in this proceeding. This is a proceeding to investigate the practices of leasing among carriers, and I submit that this sort of examination is opening up entirely different issues which have nothing to do with this case at all, and I object very strenuously to the whole line of questioning.

Mr. Evans: Mr. Examiner, Mr. Harris has stated this man is an independent contractor. I am trying to determine the direction and the degree of independence.

Mr. Turney, Jr.: I submit this witness' legal opinion of whether he is an independent contractor or not still is not in issue in this proceeding. The courts have already held with respect to a number of them that they are independent contractors, and I submit that a lay witness' opin-[fol. 1574] ion on that matter is of no materiality in this proceeding.

Mr. Burton Wheeler: Mr. Examiner, he is not asking for his opinion. He is simply asking him to state the facts so as to determine whether or not he is an independent contractor or what his real position would be, and the objection, it seems to me, is entirely out of place because one of the things complained about, as I have repeatedly said, is with reference to these practices as to whether or not they

tend to break down one of the complaints about these trip leases is that they tend to break down the whole rate structure, and that is what this question tends to go to.

Exam. Lawton: What was that question?

(Question read by the reporter.)

Exam. Lawton: I think the question is proper. Overruled.

The Witness: The only voice he would have, sir, is if he didn't want to haul it, there would be no compulsion.

By Mr. Evans:

Q. He would just quit his job, or quit your service, pardon me.

A. You are speaking now of this owner-operator who was in one of our terminals, and he is given a load that is not to his liking: He is not compelled to take it.

Q. Does he have any voice in the direction in which this load will go?

A. I don't understand your question.

[fol. 1575] Q. If your man came into your Pittsburgh terminal and wanted to go towards Cleveland and there were no load for Cleveland, but one for Philadelphia or one of your other points, would he have any right to choose—or, let me put it this way: if there were two loads, one going to Cleveland and one going to New York, would he have any right to pick the load which he would like to haul?

A. It works this way: if a man lives in Cleveland and there is a question of getting him back to Cleveland, we generally cooperate to that extent. There is no compulsion, again.

Exam. Lawton: Then he does have a voice in saying where he shall go; is that it?

The Witness: Yes. He doesn't have to take the load at all.

By Mr. Evans:

Q. In other words, he goes where the company wants him to go or he doesn't go?

Exam. Lawton: No; I didn't understand him to say that. I thought it was just the reverse.

Which is it, Mr. Witness?

The Witness: Well, I think that the Judge has more accurately stated the answer, that he is at liberty to refuse the load. We attempt to cooperate, and have done so. For example, we have men operating between Cleveland and New York because they live in Cleveland, for example, and in New York there would be several loads—maybe there will be some loads to Pittsburgh, and there will be some [fol. 1576] loads to Cleveland. The man who gets into the terminal with his load first has seniority if he is on this regular list, and if the first load was to Pittsburgh, and he would prefer to wait for a Cleveland load, that is quite all right. We will give him the first load to Cleveland. That is the way it works, practically.

By Mr. Evans:

Q. Do you have individual owner-operators, Mr. Harris, on this regular list who regularly work for Continental and no one else?

A. Yes.

Q. When these individual owner-operators report for work or for service, they report to the same dispatcher as your company drivers?

A. Yes.

Q. And they accept pretty much the same orders as your company drivers?

A. Yes.

Q. In your direct testimony, Mr. Harris, you made some reference to the number of miles hauled by owner drivers and the number of miles hauled by company drivers. Can you break down the figures you gave to show the number of long trips hauled by company drivers and by owner-operators?

A. The only thing I can do is some arithmetic which I did before—that is, the average trip of company-employed drivers in that period of time was 197 miles. I simply divided the number of trips into the total mileage, and the [fol. 1577] average trip of the owner-operators was 426 miles. So from that I would deduce that the average trip of the owner-operator was longer than the average trip of the company employees. But that is because of the peculiar nature of our own business.

Q. When you determine the rates paid for owner-operated equipment, are these rates determined in the light of giving the owner a fair return on his investment?

A. Yes.

Mr. Eldred: That is all.

Exam. Lawton: Is there any possibility of finishing the cross examination of this witness before lunch?

We have some people from far west.

Mr. Diehl: I have just one question, Mr. Examiner.

Exam. Lawton: Very well.

Cross examination.

By Mr. Diehl:

Q. Mr. Witness, in the initial instance, how does your company determine whether or not an owner driver is a responsible business-like individual or not?

A. Well, first of all, he is interviewed; secondly, his equipment is inspected; thirdly, we learn something of his references and make some inquiry. We find that generally these operators are referred to us, either by carriers in our employ, by banking institutions—a great many banks refer men to us. Banks have financed their equipment, for example.

[fol. 1578-1579] Mr. Diehl: That is all.

Exam. Lawton: Are there any other questions?

If there is nothing further, you are excused.

(Witness excused.)

Exam. Lawton: We will now recess for lunch until 1:30.

(Whereupon, at 12:30 o'clock p.m., the hearing recessed, to reconvene at 1:30 o'clock p.m.)

[fol. 1580] AFTERNOON SESSION

H. J. BISCHOFF was sworn as a witness and testified as follows:

Direct examination.

The Witness: My name is H. J. Bischoff. My address is 1121 Mateo Street, Los Angeles 21, California. I am presi-

dent of Southern California Freight Lines and five affiliated corporations, wholly owned affiliated corporations.

Mr. Diehl: Is that Southern California Freight Lines?

The Witness: Yes.

Mr. Diehl: Thank you, sir.

The Witness: The affiliated corporations and Southern California Freight Lines are owned by a parent company, Southern California Freight Lines, Limited. The latter company is not an operating company. It merely owns the stock of the six corporations I have mentioned.

Southern California Freight Lines is a regular route common carrier, interstate, under the Motor Carrier Act and intrastate in the State of California. It serves practically all communities in the six southern counties of Cali-
[fol. 1581] fornia as a regular route common carrier, and operates in the remainder of the state as a permitted carrier, a contract carrier. There are two types of permitted carrier in California: one, a contract carrier, and the other known as a radial carrier, which corresponds to an irregular route common carrier, if anyone knows for sure what that is.

Southern California Freight Forwarders, one of the affiliated companies or corporations, is an express company under the California law and serves the same six southern California counties as an express corporation and the principal cities in the San Francisco Bay territory, including Sacramento, Stockton, and San Jose. It is a freight forwarder under the Part IV of the Interstate Commerce Act.

Another affiliated company is Direct Drivers System, which is a contract carrier exclusively, under California law, and is an interstate contract carrier for one commodity in Los Angeles County.

United Truck Service is another affiliated corporation and is an irregular route common carrier, both interstate and intrastate.

International Express is a regular route common carrier interstate, and irregular route common carrier intrastate.

Peoples Transfer, Inc., is an irregular route common carrier both interstate and intrastate in the State of Arizona; also a regular route common carrier, intrastate, in
[fol. 1582] the State of Arizona.

The group of carriers operate approximately 450 pieces of automotive equipment and employ approximately 650 persons. The combined gross revenue is approximately four and a half million dollars annually. The combined payroll is approximately two and a quarter million dollars annually.

It has in service 60 to 70 pieces of equipment furnished by contractors.

Mr. Diehl: I am sorry, I didn't hear that number.

The Witness: 60 to 70. This equipment is used exclusively in the service of Southern California Freight Lines and affiliated corporations.

It has in service approximately 100 pieces of equipment furnished by contractors who also furnish services to other carriers in California.

About 25 per cent of the total revenue is earned by equipment of independent contractors.

The companies I represent execute a written contract covering every trip. I have sufficient copies of this contract. It is available in the form of a pad, and executed in triplicate. But as each copy is the same, one copy will serve the purpose of furnishing the contents. I have 15 copies here for the Commission and will pass around a pad from which I would like each one to take one sheet.

[fol. 1583] Exam. Lawton: Are these all alike?

The Witness: They are all alike.

Exam. Lawton: There is just a difference in color?

The Witness: Just a difference in color, depending on how they are used.

Exam. Lawton: Do you wish to introduce this as an exhibit?

The Witness: Yes, sir, I had intended to.

Exam. Lawton: Does everyone have a copy?

(No response.)

Exam. Lawton: Apparently so.

It will be marked for identification as Exhibit 14.

(Respondents' Exhibit 14, witness Bischoff, marked for identification.)

Exam. Lawton: Proceed, Mr. Bischoff.

The Witness: Most of the terms of Exhibit 14 for iden-

tification are self-explanatory. The first page having to do primarily with the shipping orders and compensation, and the back page having to do with the relationship between the contractor and the carrier.

Whenever this sub-hauling contract, as we call it, is used by United Truck Service, the name is written in and the name "Southern California Freight Forwarders" and "Southern California Freight Lines", is stricken out. The amount of business done with contractors, for any of the companies except the two named on this contract, Exhibit 14, is negligible.

[fol. 1584] The freight charges are the charges assessed by this company according to the published traiffs, when the service is under the regular route common carrier authority. When it is under a permitted authority, the freight charges are the charges assessed the shipper or consignee, as the case may be.

The compensation due the contractor is in accordance with an agreed basis. Practically all contractors operate under a uniform basis of compensation, depending upon the character of the operation. If the operation is between terminals and the contractor performs no service except to transport the vehicle from one terminal to another, the compensation is usually on a fixed amount sum basis or on a mileage basis.

Whenever the undertaking or contract of the contractor requires the performance of all the service of handling—that is to say, picking up the shipment at point of origin and delivering the shipment at point of destination, the prevailing mode of compensation is a percentage of the total revenue.

In other instances, where the contractor furnishes the tractor only and our companies furnish the boxes or trailers or semi-trailers, as the case may be, the mode of compensation often is on a mileage basis. In all cases the contract includes the services of a driver, and the relationship of the contractor to the carrier is that of an independent contractor.

[fol. 1585] This company began the use of equipment not owned by it during the war. Prior to the war and for a short period of time after the war began, the laws of Cali-

fornia, or I should say the regulations of the Public Utilities Commission of the State of California, required certificated carriers to confine their use of hired equipment to equipment that was either leased on a trip or mileage basis, and required the driver to be an employee of the carrier. This was known as General Order No. 93-A.

During the war, the Public Utilities Commission realized that this resulted in much equipment being idle, that carriers might properly put into service in order to obtain the maximum use out of motor vehicle equipment. General Order 93-A never did apply to permitted carriers. It only applied to certificated carriers, and was a survival of a time when bus lines, in the early stages, set up offices in different cities and engaged in the bus business, and all they did was to sell tickets, and the Commission prescribed this order, under a different number at that time, with the objective for curtailing this method of conducting transportation for hire for passengers.

No further consideration was ever given by the Commission, at any public hearing or otherwise that I am aware of—I know there was no public hearing—demonstrating the necessity of the provisions of General Order 93-A, and the Commission made no move to amend or otherwise change it until the exigencies of the last war [fol. 1586] made it apparent that it was an obstacle to maximum use of equipment.

Recently, the Commission, the Public Utilities Commission of California, repealed many orders which were prescribed as war necessity, but did not repeal this one. A hearing, however, was held in the State of California, at San Francisco and at Los Angeles, and the staff of the Public Utilities Commission presented its views to the effect that the only requirement that the Commission was interested in was that the carrier assume full responsibility to the public. They were not interested in the subject of how the contracts were provided, or what the contents of the contracts were between the owner of the vehicle or the relationship of the driver of the vehicle to the carrier as long as all the obligations which the carrier owed to the shipping public and all the safety regulations were taken care of.

Mr. Pou: When you say the Commission, Mr. Bischoff, who do you mean?

The Witness: The Public Utilities Commission of California.

No decision has been rendered on that order, and no carrier in California offered any objections to the proposal of the Commission staff. In fact, all those who appeared expressed themselves as gratified with the position taken by the Commission staff. I am now talking about carriers operating in California, both certificated and permitted carriers.

[fol. 1587] Mr. Lieberman: May I interrupt to ask what the name of that proceeding is, if you know?

The Witness: It has a number, a docket number, but it was a proceeding to determine what orders, which had been prescribed, and which were called emergency orders, should be cancelled or modified.

Mr. Lieberman: In other words, it didn't relate solely to this Order 93-A?

The Witness: No. It related to all the emergency orders prescribed during the war.

Mr. Lordan: Mr. Bischoff, if I understand the California proceeding correctly, one of the questions involved in that proceeding was whether or not California's old order, 93-A, should be continued or modified; is that correct?

The Witness: No. The question before the Commission was whether the relaxation of 93-A, or the suspension of 93-a, should not be carried out.

Mr. Lordan: And that matter is before the Commission for determination?

The Witness: Yes.

Mr. Lordan: And no decision has been rendered thereon?

The Witness: That is what I have said.

Mr. Lordan: And this testimony that you are talking about, having been presented to the Commission, has been presented by some members of the staff?

[fol. 1588] The Witness: That is correct.

Mr. Diehl: The position, however, of the Commission and its staff, as I understood you, sir, was limited to the responsibility as you have just stated?

The Witness: Exactly.

Mr. Diehl: Thank you.

Mr. Lordan: I think that is an incorrect statement, because if I understood counsel's statement right, he said, "The position of the Commission and its staff."

Mr. Diehl: That is right.

Mr. Lordan: But the position of the Commission not having been announced is unknown. The position of its staff, the recommendation, might have been known, as a result of Mr. Bischoff being present at the hearing.

Mr. Diehl: Perhaps I didn't understand you correctly, but as I understood you, all persons appearing at the hearing recommended to the Commission that it adopt the position which its staff recommended. And that recommendation was limited to the one question of responsibility.

The Witness: That is correct. If I said that the Commission had expressed their views, of course, I didn't mean that.

Mr. Diehl: I am sorry. I was the one who was in error and I stand corrected. The Commission, as you said, has not yet announced its decision?

The Witness: I meant to say that the staff presented its [fol. 1589] views about all of these emergency orders, and all the carriers who made an appearance at these several hearings—and I think there were three of them—one in San Francisco and two in Los Angeles—expressed its wholehearted approval of the position taken by the staff of the Commission.

Mr. Burton K. Wheeler: Does that mean that the staff recommended that a man could just sell tickets, not on any buses or anything at all?

The Witness: The matter of selling tickets is no longer a practice. The buses are now operated by two large concerns and we don't have that situation. There are no certificates owned by individuals who would engage in any such undertaking. But that is not the situation with reference to trucks.

I might say that there are probably less than 200 certificates held by carriers authorized to operate as regular route common carriers, and there are 15,000 permitted carriers in California.

Mr. Burton K. Wheeler: What is the difference?

The Witness: A certificated carrier must show public

convenience and necessity to render a specific service, before he is entitled to operate in that capacity, whereas a permitted carrier merely needs to state that he either owns or leases one truck and pays a fee of $3 and furnishes an insurance policy of $5,000 for injury to one person and $10,000 for injury to more than one person and $1,000 for property damage. If he does those things [fol. 1590] and maintains that insurance in effect, he gets that permit. I might add in that connection that in California the permitted carriers handle far more volume of traffic than the certificated carriers who serve the public indiscriminately. At least theoretically they do.

Exam. Lawton: What is the relation of the permitted carrier to the general public? Does he haul for any shipper who offers him freight? Or does he haul for just a few shippers under contract? Just what is the situation?

The Witness: The authority he has is probably one thing, and his performance is probably another.

Mr. Diehl: What does the law permit him to do?

The Witness: The law permits him to operate as a contract carrier. And, of course, that means under probably bi-lateral contracts a fellow must construe it to be the case, not just with anyone with whom he executes some writing agreeing to handle his traffic, but some of us think that it must be a bilateral contract by which the shipper assumes obligations as well as the carrier.

But that view has not been enforced in California. That is a question of law and the Commission hasn't taken any stand on it.

Now, the irregular route common carrier is a common carrier other than a certificated carrier. That is the way the statute defines it. So a certificated carrier must operate between fixed termini or over a regular route, whereas [fol. 1591] a radial carrier is a common carrier who does not have to operate between fixed termini over a regular route.

Now, I might state that by reason of the rule which was in effect prior to World War II, certificated carriers in California were extremely handicapped to meet many problems in transportation. That has not been the case in interstate transportation.

California is situated geographically and commercially